The Law of
LAND SOCIETIES,

AND

Co-operative Farming and Land Societies,

With Withdrawable and Transferable Shares;

AND THE LAW OF

Co-operative Banks and of Co-operative Societies, generally,

UNDER THE INDUSTRIAL AND PROVIDENT SOCIETIES ACT, 1876;

WITH

A Digest, alphabetically arranged, of recent Legal Decisions in connection with the
FORMATION AND OPERATIONS OF

LAND INVESTMENT COMPANIES,

UNDER THE COMPANIES' ACTS, 1862–1880.

BY

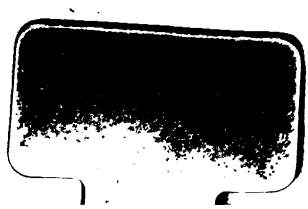
ARTHUR SCRATCHLEY, M.A., Barrister-at-Law,

Formerly Fellow of Queens' College, Cambridge; Joint Author of "The Law of Building Societies," &c.

Third Edition—Re-written and Enlarged.

LONDON:
SHAW & SONS, FETTER LANE AND CRANE COURT, E.C.
Law Printers and Publishers.

1881.



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NOTICE.

In reference to the Land Question, we think it desirable to request our readers, who are interested in the subject, to bear in mind that the plan of Local Co-operative Farming Societies, which we recommend in Part IV., is something different to that of the large Companies or Corporations established for the purpose of joint-stock farming.

Such Associations will, no doubt, like all other important undertakings, present features of value, but their business will be mainly to trade with hungry capital for the purpose of making profits out of Farming, as with any other business for speculative shareholders.

In contradistinction to this, a Co-operative Society would be local. It would restrict its members to persons actually engaged in farming, and not seek to be too big in size. The system pursued would be one of strict mutuality, and the profits be divisible amongst the members who assisted in creating them.

*** *Suggestions respecting Land Societies, which are deemed likely to lead to greater facilities in their operation, in connection with the approaching legislation on Land in England, are invited to be addressed to the Author.*

2, Plowden Buildings,
Temple, London.

June, 1881.

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ADDENDA TO PART III.

Page 35, INCUMBRANCES, *Greaves* v. *Tofield.* Add the later references L. R. 14 Ch. Div. 563 ; 50 L. J. 118, Ch.

Page 46, MORTGAGE, *Cummins* v. *Fletcher.* Add the later references L. R. 14 Ch. Div. 699 ; 42 L. T. (N.S.) 859 ; 28 W. R. 772.

Page 48, par. 3.—The following words (printed in italics) have to be inserted, which were accidentally omitted. The paragraph should read thus :—

The making of Advances of money upon any of the . . . . securities *(subject to Mortgage Debentures being founded only upon those* affecting property in England or Wales) of the following descriptions.

Page 55, POLICY, *Darrell* v. *Tibbitts.* Add the later references L. R. 5 Q. B. Div. 560 ; 29 W. R. 66.

Page 66, PROMOTERS' CONTRACTS, *Sullivan* v. *Mitcalfe.* Add the later references L. R. 5 C. P. Div. 455 ; 29 W. R. 181 ; 44 L. T. (N. S.) 8.

Page 71, PROSPECTIVE PAYMENTS, *Protector Endowment, etc., Co.* v. *Grice.* The instalment in this case was stated in the Report to be £3 : 10*s.* payable *monthly.* That we notice, however, must be an error ; it should be £3 : 10*s.* payable *quarterly.*

Page 72, PROSPECTIVE PAYMENTS, *Protector Endowment, etc., Co.* v. *Grice.* Add the later reference L. R. 5 Q. B. Div. 592.

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TABLE OF CASES

IN THE

DIGEST OF DECISIONS

Connected with the

FORMATION AND OPERATIONS OF COMPANIES.

PRELIMINARY REMARKS.

I.—This publication is designed to serve as a guide to:—

(i.)—The formation and management of Co-operative Societies (whether as Land Societies or for general Co-operative purposes, including Banking), under the *Industrial and Provident Societies Act;*

(ii.)—The recent legal decisions of importance relating to the Formation and Operations of Companies for Land Investment or Local Improvements, under the *Companies Acts.*

With respect to Co-operative Societies dealing in Land, it may be mentioned that they were first specifically authorized by "The Industrial and Provident Societies Act, 1871" (34 & 35 Vict. c. 80), which is consolidated in "The Industrial and Provident Societies Act, 1876" (39 & 40 Vict. c. 45).

When the old Building Societies Act was framed (1836), the system of Freehold Land Societies (1847) had not been invented, and that Act, therefore, contained no provisions such as are required to meet the peculiar circumstances of land societies. Nor does the Building Societies Act of 1874 give the necessary powers. In consequence, many of these associations have, since the passing of the Limited Liability Acts (1855-62), been incorporated as Joint Stock Companies.

The particular Industrial and Provident Societies Act, which became law in 1871, related to the form of industrial investment popularly known under the name of Co-operative Land Societies. Up to that time the object of the societies had been merely the carrying on, in common, any Labour, Trade, or Handicraft; but the facility with which they had been able to raise and accumulate capital, and the earnest desire, on the part of the members, to become proprietors of their own houses and land, led the managers to invest large sums out of the surplus funds in that way, and finally to apply to Parliament for power to make the buying and selling of land one of the main objects. Accordingly, the statute of 1871 was framed, and has since been consolidated in that of 1876, so as to afford to these societies the fullest powers and the utmost facilities for dealings of the nature contemplated.

II.—*Co-operative Farming and Land Societies.*

Great success has, undoubtedly, attended the establishment of co-operative societies, whether for the purpose of retail sales, or for the equally important object of the manufacture of the goods intended to be sold.

A fresh extension of the principle has been suggested by persons, experienced in the subject, viz., that in those localities,—where farms on a large scale are found to be the most successful, and relatively the most economical to conduct,—the profit which now goes to one person should, by the action of a *Farming and Land* society, be obtained for united individuals, each of whom should

bring his small capital into one common fund, to be utilised in the undertaking in the form of shares.

By the technical expression "farming" (proposed as one of the designations of such a society) it is not intended to confine the society's operations to any particular kind of farm culture. It is recognised that, in some articles of produce, this country may not be always able to compete with the inhabitants of other countries more favourable in respect to climate, or with greater freshness of soil. What is contemplated for the business of the societies in view is rather that general agricultural use of the land, which its position and character may render the most profitable.

The Industrial and Provident Societies Act, 1876, gives every facility for the establishment of such societies.

III.—It is to be noticed that :—

(i.)—It is not essential that a society, under the statute, should carry on any Labour, Trade, or Handicraft, other than the trade of buying and selling Land.

(ii.)—Such societies enjoy the peculiar and remarkable privilege (not afforded by the Joint Stock Companies Acts) of being able to issue shares, which are *Withdrawable* at will.

(iii.)—Apart from the Withdrawable shares, other shares can be issued, which shall be only Transferable after the manner of shares in joint stock companies, if such should be found more suitable for some investors' requirements.

IV.—This "withdrawable" feature is one of the causes of the popularity of Co-operative Societies.

At the time when the House of Commons had under consideration the Bill to facilitate the safe investment of

the savings of the industrious classes, we pointed out that provident persons, with limited means, did not want joint-stock associations or companies with unlimited liability, nor with only *transferable* shares which often could not be got rid of.

That power was desired in co-operative trading societies to issue shares on the principle of building societies, viz. :—

(i.)—Withdrawable and transferable at will.

(ii.)—Having limited liability, and not subject to many of the objectionable restrictions, which then disfigured the law relating to joint-stock companies' partnerships.

Hence resulted the peculiar feature of the Industrial and Provident societies' statutes. Each successive enactment has improved the constitution of these societies, and now they are, under another name, really "Limited Joint-Stock Companies," with *withdrawable* shares and *transferable* shares. [See *Digest*, Part I., p. 29.]

V.—*Of Co-operative Banks.*

It is, also, provided by the Act of 1876 that societies may be registered for the purpose of carrying on the business of Banking.

They are, however, subject to certain special provisions, described in the Digest (Part I., p. 3), among which is the condition that *Withdrawable* shares shall not be issued.

VI.—*Of Co-operative Societies generally.*

Apart from those having Land operations in view or Banking, considerable encouragement is afforded by the Act of 1876 to the formation of co-operative societies for general purposes. Among its provisions are the following:—

(i.)—An Industrial and Provident society becomes on Registration a body Corporate, with perpetual succession and a common seal, and with limited liability to its members.

It performs all acts in its corporate name, without the intervention of Trustees, except for a few special purposes as defined in the Act.

(ii.)—The society must have a registered Office, which it may change from time to time, without restriction as to county, by merely giving notice thereof to the Registrar of Friendly Societies.

(iii.)—A society may change its Name, and the Registrar is not to register a society by any name identical to, or of deceptive similarity with, that of any existing society.

(iv.)—The Profits of the society may be applied to any lawful purpose; but the mode of application thereof must be provided for by the rules.

VII.—*Disputes.*

Following the practice laid down for other kindred institutions, the statute directs that Disputes (arising between a member, or person claiming through a member, or under the rules of a registered society, and the society or an officer thereof,) shall be decided, by arbitration, in manner directed by the rules of the society; and the decision so made shall be binding and conclusive on all parties, without appeal, and cannot be removed into any court of law, or restrained by injunction. Application may be made to the County Court of the district for enforcement of decisions respecting Disputes.

It is provided, also, that Disputes may, by the consent of the parties thereto, be referred to the registrar, unless the rules of the society forbid; or where the rules of a society so direct, Disputes may be referred to Justices.

Where, however, the rules contain no direction, or where no decision is made on a Dispute, application may be made to the County Court, or to a Court of Summary Jurisdiction, to determine the matter.

VIII.—*Amalgamation, or Transfer to another Society.*

Any two or more societies may, at any time, by special resolution of both or all such societies, become amalgamated together as one society, with or without any dissolution or division of the funds of such societies or either of them.

It is, likewise, provided that a society may, by special resolution, transfer its engagements to any other registered society which may undertake to fulfil the engagements of such society.

IX.—*Conversion into a Joint-Stock Company.*

A society may, by special resolution, determine, at any time, to convert itself into a company under the Companies Acts, or to amalgamate with or transfer its engagements to any such company. In either of such cases, the registry of society under the Industrial and Provident Societies Act becomes void.

X.—*Dissolution.*

A society may be Dissolved and its business wound up by a very simple process through an Instrument of

dissolution, instead of by the expensive and protracted method required for associations under the joint-stock Companies Acts.

The consent of the members must be testified by the signature of three-fourths affixed to the instrument of dissolution. The Liabilities and Assets of the society are to be set forth in detail in the instrument, as are also the number of the members and the nature of their interests in the society respectively, the claims of creditors, if any, and the intended appropriation of the funds and property of the society.

The instrument of dissolution when registered is binding on all members of the society.

Alterations in the instrument of dissolution may be made by the consent of three-fourths of the members testified by their signatures to the instrument.

XI.—*Of the Rules.*

For the use of persons desirous of forming a Co-operative Land Society, we have inserted, in Part II., p. 64, an Index to the clauses required to be in the Rules for registration under the Industrial and Provident Societies Act, 1876.

Other clauses, relating to this particular kind of business, will be found in the rules in our "*Law of Building Societies.*"

In framing the Rules of a society the following points should be borne in mind:—

(i.)—The rules of every society are to contain provisions in respect of the several matters mentioned in schedule II. of the Act.

(ii.)—The rules bind the society and its members to the same extent as if each member had signed and sealed them.

(iii.)—They are equivalent to a deed under seal.

(iv.)—Copies are to be forwarded to the Registrar.

(v.)—Alterations or additions to the rules are to be registered, and are not valid until registered.

(vi.)—A copy of the rules must be delivered to every person on demand, on payment of a sum not exceeding one shilling.

(vii.)—Delivery of untrue rules, with intent to mislead or defraud, is a Misdemeanour.

(viii.)—To allow members to withdraw their shares, a provision must be inserted in the rules, but the rules may determine whether the shares shall be either transferable, or withdrawable; but shares which are transferable cannot be withdrawable, and *vice versâ*.

XII.—*Of Land Investment Companies, under the Companies Acts*, 1862 *to* 1880.

As from various causes it is sometimes preferred to establish associations of this kind under the Companies Acts, we have given, in Part III., a Digest of selected decisions in connection with the formation and operations of Land Investment Companies, and Companies for Local Improvements.

Most of the cases are applicable to all companies and must not be overlooked by those Societies to which Parts I. and II. relate.

PART I.

DIGEST

OF THE

INDUSTRIAL AND PROVIDENT SOCIETIES

ACT OF 1876.

(39 & 40 VICT. c. 45.)

*** *The reader is referred for legal decisions relating to kindred Societies, to the Author's companion work to this publication, entitled* "THE LAW OF BUILDING SOCIETIES," *written jointly with* Mr. BRABROOK, *the Assistant-Registrar of Friendly Societies, and published by Messrs. Shaw and Sons, Fetter Lane, E.C.*

DIGEST

OF THE

INDUSTRIAL AND PROVIDENT SOCIETIES ACT, OF 1876.

(39 & 40 VICT. c. 45.)

ACKNOWLEDGMENT OF REGISTRY.

See CERTIFICATE, EVIDENCE.

ACT

Consolidates and amends the law relating to Industrial and Provident Societies. See Preamble to Act.

Short title of Act is "The Industrial and Provident Societies Act, 1876"—s. 1.

Date of operation of, is 11th August, 1876.

Extent of—see s. 2.

Definition of terms in—see s. 3.

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For list of Acts Repealed—see Sched. I.

ADMINISTRATION.

1.—Sums not exceeding £50 are payable or transferable at death without administration, if members die Intestate and without Nominees—s. 11 (6).

2.—Payments made after the decease of any member to persons apparently entitled are valid—s. 11 (7).

ADMISSION.

Terms of admission of members (including societies, or companies) must be provided for by rules of society—Sched. II. (2).

ADVANCES.

Rules of society may provide for the Advancing of money by the society to members on the security of real or personal property—s. 12 (2).

ALTERATION OF RULES.

See RULES AND AMENDMENTS; see, also, CERTIFICATE.

AMALGAMATION.

See TRANSFER OF ENGAGEMENTS.

Any two or more societies may, by special resolution of both or all such societies, become Amalgamated together as one society, with or without any dissolution or division of the funds of such societies or either of them—s. 16 (3), (5).

So also a society may, by special resolution, determine to Amalgamate with any company under the Companies Acts, in which case its registry under the Industrial and Provident Societies Act becomes void—s. 16 (4), (5), (8).

ANNUAL RETURNS.

See RETURNS.

APPEAL

From refusal by Registrar to register a society or rules may be made to the Court—s. 7 (8).

So also from cancelling or suspension of registry of society—s. 8 (4).

And from refusal to amend rules of society—s. 9 (3).

Appeals in England, Ireland, or Scotland, how and where to be made—s. 19 (6), (7).

AUDIT.

1.—Every society shall have an annual audit of its accounts—s. 10 (1c).

2.—Copies of report of auditors and annual balance-sheet are to be hung up in the society's office, and must be sent to the Registrar—s. 10 (1d. g).

3.—Provision for annual Audit must be set forth in rules of society—Sched. II. (8).

4.—Public Auditors may be appointed and their rates of remuneration may be determined by Treasury, but the employment of such Auditors is not compulsory on any society—s. 21.

BALANCE SHEET.

See RETURNS.

BANKING.

It is provided by section 6, that societies may be registered for the purpose of carrying on the business of Banking, subject, however, to the provisions contained in the Act, which are as follows:—

(i.) No society which has any withdrawable share capital shall carry on the business of Banking—s. 10 (2a).

(ii.) A statement in the form given in the 3rd schedule to the Act must be made out half-yearly, and kept conspicuously hung up in the office of a society doing Banking business—s. 10 (2b).

(iii.) Non-compliance with these provisions is an offence—s. 10 (3d).

(iv.) It is, however, enacted that the taking of Deposits not exceeding 5*s.* in one payment, nor £20 for one depositor, payable on not less than two clear days' notice, is not included in the business of Banking, within the meaning of the Act—s. 10 (2c).

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Provision for the claims of executors or administrators of, or trustees of property of, must be set forth in rules of societies—Sched. II. (9).

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See PROMISSORY NOTES.

BOND.

Forms of Bond to be executed by Officers giving security will be found in Sched. III.

BOOKS.

Every society is to allow its members, and any person having an interest in the funds, to inspect its books—s. 10 (1e).

BORROWING OF MONEY.

See DEPOSITS.

By schedule II. (6), every society is required to determine, by its rules, whether it may "contract loans" (*i.e.* borrow money), or receive money on deposit, subject to the provisions of section 10 (2), from members or others; and, if so, under what conditions, on what security, and to what limits of amount. [The money lent to the society may be either at a fixed rate of interest, or in consideration of a share of the society's profits, respecting which see "The Partnership Amendment Act, 1865," in Part III. hereto.]

BUSINESS.

As to societies doing business in more than one country—see s. 7 (6). See, also, OBJECTS.

CANCELLING OF REGISTRY.

See REGISTRY OF SOCIETIES.

CAPITAL.

See INVESTMENTS.

CERTIFICATE.

(*Now termed Acknowledgment of Registry.*)

1.—The Registrar may refuse his Certificate if the Alterations appear, on the face of them, not to have been duly made: as where the officers of a society (the St. Patrick's United Assurance Sick and Burial Society) established at Liverpool called a meeting for altering the rules in Manchester. *The Queen* v. *John Tidd Pratt, Esq.*, 1865; 6 B. & S. 672. But

he is not bound to inquire into the regularity of making the alterations, or the truth of the declaration. *Dewhurst* v. *Clarkson*, 1854; 3 Ell. & Bl. 194.

2.—The Registry does not make an illegal rule legal. *Kelsall* v. *Tyler*, 11 Exch. 513; *Laing* v. *Reed*, L. R. 5 Ch. App. 4.

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Application of Act to, and provisions as to—s. 26.

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Definition of—see s. 3.

Appointment and removal of, powers and remuneration of, must be provided for by rules of society—Sched. II. (4).

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See CORPORATE BODY.

A society may, by special resolution, determine at any time to convert itself into a Company under the Companies' Acts, or amalgamate with or transfer its engagements to any such Company. In either of such cases the registry of society under the Industrial and Provident Societies' Act becomes void—s. 16 (4), (5), (7), (8).

COMPANIES ACTS.

Provisions of, are applicable in case of Winding up of society—s. 17 (1).

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See WINDING-UP.

An Industrial and Provident Society, established with unlimited liability under 13 & 14 Vict. c. 115, was subsequently registered with limited liability under the Industrial and Provident Societies Act, 1862 (25 & 26 Vict. c. 87), for the purpose of

being wound-up. On an application to place on the list of Contributories a person who held shares fully paid up before the subsequent registration, *held*, that on the true construction of the last-mentioned Act, and of the Companies Act, 1862, such a shareholder could not be made liable as a Contributory.—*In re Sheffield Co-operative and Industrial Society, Fountain's case*, April, 1865; 12 L. T. (N. S.) 335; 11 Jur. (N.S.) 553; 13 W. R. 667; 34 L. J. Ch. 593.

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1.—Definition of—see s. 3.

2.—Application may be made to, for enforcement of decisions respecting disputes—s. 14 (1).

3.—Disputes may be referred to—s. 14 (5).

4.—Has jurisdiction in case of winding-up of society—s. 17 (1).

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DEPOSITS.

See BORROWING OF MONEY.

1.—Deposit accounts of members shall not be inspected without their consent—s. 10 (1e).

2.—A society which only receives Deposits not exceeding 5*s.* in one payment, nor £20 for one depositor, is not considered to be doing the business of banking—s. 10 (2c).

3.—Claims due on account of Deposits are to be paid before the withdrawal of capital—s. 10 (2c).

4.—Determination whether society may receive money on Deposit, under what conditions, on what security, and to what limits of amount, must be provided for by rules of society—Sched. II. (6).

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See MORTGAGES.

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1.—Every Dispute between a member or person claiming through a member or under the rules of a registered society, and the society, or an officer thereof, shall be decided in manner directed by the rules of the society—s. 14 (1).

2.—The decision so made shall be binding and conclusive on all parties without appeal, and shall not be removable into any court of law, or restrainable by injunction—s. 14 (1).

3.—Application may be made to County Court for enforcement of decisions respecting Disputes—s. 14 (1).

4.—May, by consent of parties, be referred to Registrar, unless rules of society forbid—s. 14 (2).

5.—Registrar may administer oaths, etc., in such case—s. 14 (3).

6.—Disputes may be referred to Justices where rules of society so direct—s. 14 (4). See JUSTICES.

7.—Where rules of the society contain no direction as to Disputes, or where no decision is made on a Dispute, application may be made to the County Court, or to a Court of Summary Jurisdiction, to determine the same—s. 14 (5).

8.—The Court or Registrar may, if required, state a case for opinion of Supreme Court—s. 14 (6).

DISSOLUTION.

See also WINDING-UP.

1.—A society may be Dissolved by an order to wind up the society, or by a resolution for the winding-up thereof, made as is directed in regard to companies by the Companies' Act, 1862, or by the consent of three-fourths of the members, testified by their signatures to an instrument of Dissolution—s. 17 (1).

2.—As to the liability of the members in case of Dissolution—see s. 17 (2).

3.—Where a society is terminated by an instrument of Dissolution, its liabilities and assets shall be set forth therein in detail; so also the number of the members and the nature of their interests in the society respectively, the claims of creditors, if any, and the intended appropriation of the funds and property of the society—s. 17 (3a).

4.—Alterations in the instrument of Dissolution may be made by the consent of three-fourths of the members, testified by their signatures to the instrument—s. 17 (3b).

5.—A statutory declaration, made by three members, that the provisions of the Act have been complied with, must accompany the instrument of Dissolution when sent to the Registrar—s. 17 (3c).

6.—The instrument of Dissolution when registered is binding on all members of the society—s. 17 (3d).

7.—Notice of the Dissolution must be advertised by the Registrar, at the society's expense. Any members desirous of setting aside the Dissolution must commence proceedings in the

County Court within three months from the date that such advertisement appears. If no such proceedings are commenced the society shall be legally Dissolved from the date of such advertisement, and proof of the signatures to the instrument shall not be necessary—s. 17 (3e).

8.—Notice of proceedings to set aside a Dissolution must be sent to central office—s. 17 (3f).

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See ADMINISTRATION.

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1.—Failure by society to send any Document required by Act is an offence—s. 10 (3a).

2.—Shall be in such form, and shall contain such particulars, as Chief Registrar prescribes—s. 10 (5).

3.—All Documents sent to the Registrar shall be registered or recorded by him—s. 10 (6).

4.—Every instrument, Document, etc., bearing the seal or stamp of the central office, shall be received in evidence without further proof. Every Document purporting to be signed by the chief or any assistant Registrar, or any inspector or public auditor under Act, shall, in absence of evidence to the contrary, be received in evidence without proof of signature—s. 24.

DUTIES AND OBLIGATIONS OF SOCIETIES.

Every Society must—

(i.) Have a registered office and notify situation of same, or change thereof, to the Registrar—s. 10 (1a).

(ii.) Publish its name by affixing it outside its office, engraving it on its seal, and mentioning it in all notices, advertisements, &c., and bills of exchange, cheques, &c.—s. 10 (1b).

(iii.) Have an annual audit by one of the public auditors appointed under the Act, or by two or more persons appointed, as the society's rules provide—s. 10 (1c).

(iv.) Send to the Registrar a general statement (to be called the

Annual Return) of its receipts and expenditure, funds and effects, as audited—s. 10 (1d).

(v.) Allow inspection of its books by any member or person having an interest in its funds—s. 10 (1e).

(vi.) Supply gratuitously on application to every member or person interested in its funds, a copy of its last Annual Return—s. 10 (1f).

(vii.) Keep a copy of last balance-sheet, with auditor's report, hung up at its registered office—s. 10 (1g).

ENGLAND.

1.—Appeals in, how and where made—s. 19 (6).

2.—Includes the Channel Islands except as provided—s. 3.

3.—Definition of "Summary Jurisdiction Acts" in—s. 3.

EVIDENCE.

Acknowledgment of registry is Evidence that society is duly registered, unless it be proved that the registry of the society has been suspended or cancelled—s. 7 (10).

Of documents—See DOCUMENTS.

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See INCOME-TAX.

EXISTING SOCIETIES.

See INCORPORATION.

1.—As to societies established before the Act came into operation (11th August, 1876)—see ss. 4, 5, 7 (4), 11 (1), (2).

2.—A society registered under any of the former Acts shall be deemed to be a society registered under this Act, and its rules shall, so far as the same are not contrary to any express provision of this Act, continue in force until altered or rescinded—s. 5.

3.—A society registered at the time when this Act came into operation, or the members thereof, may respectively exercise any power given by this Act, and not made to depend on the provisions of its rules, notwithstanding any provision contained in any rule thereof certified before this Act was passed—s. 11 (2).

FALSIFICATION.

The penalty for Falsification in any return or document required to be sent, produced or delivered for the purposes of Act, is not exceeding £50—s. 18 (1).

FEES.

A scale of Fees to be paid for matters to be transacted under Act may be determined by Treasury—s. 22.

FORMER ACTS.

See Sched. I. of Act.

As to societies registered under Former Acts—see ss. 5, 7 (4), 11 (2).

Repeal of—s. 4.

FORMS.

See Sched. III. of Act.

A society may set forth in its rules, or in any schedule thereto, the Forms necessary for carrying the purposes of the society into effect—s. 12 (6).

FRAUD AND MISAPPROPRIATION.

Any person guilty of fraud or misappropriation shall be liable on summary conviction to a penalty not exceeding £20, with costs not exceeding 20*s.*, or in default to be imprisoned, with or without hard labour, for any time not exceeding three months. But this provision is not to prevent any such person from being proceeded against by way of indictment—s. 12 (10).

FUNDS.

See INTEREST OF MEMBERS.

See SHARES.

The interest of a member (other than a society registered under Act) in the Funds of a society is limited to £200—s. 6.

FURTHER CHARGE.

See MORTGAGES.

GAZETTE.

Definition of—see s. 3.

GUARANTEE SOCIETY.

The security of, may be taken on behalf of any officer of society—s. 13 (1).

GUERNSEY, ISLE OF.

See CHANNEL ISLANDS.

HANDICRAFT.

See LABOUR.

INCOME-TAX.

A society, by s. 11 (4), is "not chargeable under [Schedules C. or D.] of the Income Tax Acts, but no member of, or person employed by, the same to whom any profits are paid shall be exempted from any assessment to the said duties to which he would otherwise be liable."

"The Customs and Inland Revenue Act, 1880" (43 Vict. c. 14, s. 8), however, does away with the exemptions from income tax "in case the society sells to persons, who are not members thereof, and the number of the shares of the society is limited either by its rules or practice."

INCORPORATION.

Upon registration a society becomes a body corporate by the name described in the acknowledgement of registry by which it may sue and be sued, with perpetual succession and a common seal, and with limited liability to its members. The registration under the Act of a society established under former Acts vests in the society all property for the time being vested in any person in trust for the society; and all legal proceedings pending by or against the trustees of any such society may be prosecuted by or against the society in its registered name without abatement—s. 11 (1).

INFORMATION.

Neglect or refusal by a society to furnish any, or giving false or insufficient Information required by Act is an offence—s. 10 (3b. c).

INSPECTION OF BOOKS.

See Books.

INSPECTORS.

1.—Upon the application of a certain number of members of a society proportionate with whole number, Inspectors may be appointed by Registrar, with consent of Treasury, to examine into affairs of society—s. 15 (1a).

2.—Application for appointment of inspectors must be supported by evidence, showing good reason—s. 15 (2).

3.—Applicants requiring Inspectors to be appointed may be ordered to give security for costs—s. 15 (3).

4.—Expenses incidental to inspection shall be defrayed by applicants, or out of society's funds as Registrar directs—s. 15 (4).

INSTRUMENT OF DISSOLUTION.

See Dissolution.

INTEREST OF MEMBERS.

1.—The portion or interest which a member (other than a registered society) may hold in the funds of the society is not to exceed £200—s. 6.

But if he be married, the investment may be made £400, as his wife may become a member for a like amount (£200) in paid-up shares, under section 5 of "The Married Women's Property Act, 1870." So, also, if he have children over 16 years of age, they can take shares in their names as minors, unless there is a provision made in the rules of the society to the contrary—s. 11 (9). He may also lend money to the society—see Borrowing of Money.

2.—Determination of the amount of Interest (not exceeding £200) in the shares of a society which a member (other than a registered society) may hold, must be provided for by rules of society—Sched. II. (5).

NOTE.—From this it would appear that the word "funds" in section 6 is used in the same sense as the word "shares" in the above Schedule, although the point is not quite clear. Elsewhere throughout the Act the word "funds" has apparently a wider signification.

3.—In the Act of 1876, the *penalty* for holding any Interest exceeding £200 sterling (which was provided for in the repealed Act of 1867) is now omitted.

The present words are:— . . . . "No member other than a society registered under this Act shall have or claim an Interest." . . . .

A society allowing a member to have or claim an Interest exceeding £200 would be doing a thing forbidden by the Act, and would, therefore, commit an offence under the Statute—s. 10 (3).

The old penalty was forfeiture of the excess, but the forfeiture belonged apparently to the society, even though it was a party to the offence. The practical effect of the present Act is the same, for if the member cannot claim the excess over £200, it must enure to the benefit of the other members.

In the 2nd Schedule to the Act of 1876, reference is made to "the amount of Interest, not exceeding £200 sterling, in the shares of the society which any member other than a registered society may hold." On the other hand, the profits of the society (whatever be their amount) "may be applied to any lawful purpose" (s. 12 (7)), and, therefore, if they exceeded the £200 limit of Interest in the funds imposed by the Statute, they could be so disposed of, but could not be paid to the member.

INTESTACY.

See ADMINISTRATION.

INVESTMENTS.

1.—May be made by society in shares or on security of another society under Act, or of a society under "The Building

Societies Acts," or of any company with limited liability—s. 12 (4).

2.—Determination whether, and by what authority, and in what manner, Investments of Capital may be made must be provided for by rules of society—Sched. II. (12).

IRELAND.

Appeals in—s. 19 (6).

Definition of "Summary Jurisdiction Acts" in—see s. 3.

JERSEY, ISLE OF.

See CHANNEL ISLANDS.

Provisions in Act as to discharge of mortgages do not apply to—s. 12 (8).

JURISDICTION.

See SUMMARY PROCEDURE AND APPEALS.

JUSTICES.

Disputes may be referred to where rules of society so direct—s. 14 (4).

Erroneous decisions of.—If either party deems a decision erroneous in point of law, he may apply to the Justices to state a case for one of the Superior Courts, which they are bound to do. Per SHEE, J., in *The Queen* v. *Lambarde and Others, Justices of Kent,* 1866; L. R., 1 Q. B. 388. The complaint must be made and information laid within six months from the time when the offence was committed. In London, the Lord Mayor or any Alderman sitting at the Mansion House or at Guildhall, or any metropolitan police magistrate, may do alone anything that is required by statute to be done by two Justices. By 21 & 22 Vict. c. 73, the like power is given to any stipendiary magistrate in the country. In default of payment of the penalty, the person convicted is liable to a term of imprisonment.

LABOUR.

Societies may be established for carrying on any Labour, trade, or handicraft, whether wholesale or retail—s. 6.

LAND.

1.—Definition of—see s. 3.

2.—Societies may be registered for the purpose of buying and selling Land—s. 6.

3.—A society may (if its rules do not otherwise direct) hold, purchase, or take on lease in its own name any Land, and may sell, exchange, mortgage, lease, or build upon the same—s. 12 (1).

LIABILITY, LIMITED.

See WINDING-UP.

In case of Winding-up of society no member shall be required to pay any contribution exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a past or present member—s. 17 (2d).

LIMIT OF INTEREST.

See INTEREST OF MEMBERS.

"LIMITED"

Is to be last word in society's name—s. 7 (5).

LOANS.

See BORROWING OF MONEY, DEPOSITS.

See INVESTMENTS.

MEETINGS.

See SPECIAL MEETINGS.

1.—Definition of—see s. 3.

2.—Mode of holding, must be provided for by rules of society—Sched. II. (3).

MEMBERS.

1.—Limit of interest of—s. 6.
2.—Names of, every society shall allow inspection of—s. 10 (1e).
3.—Shall be bound by rules of society—s. 11 (2).
4.—Moneys due from, are a debt recoverable from them—s. 11 (3).
5.—Minors may be Members (if over 16 years), unless provision be made in rules of society to the contrary—s. 11 (9).
6.—Register of Members kept by society is *primâ facie* evidence of the particulars entered therein—s. 11 (11).
7.—Advances may be made to, on security of real or personal property—s. 12 (2).
8.—Liability of, in case of winding-up of society—s. 17 (2).
9.—Terms of admission of, must be provided for by rules of society —Sched. II. (2).
10.—Determination whether and how Members may withdraw from society, must be provided for by rules of society—Sched. II. (9).

MINORS

May be members (if over 16 years), unless provision be made in rules of society to the contrary—s. 11 (9).

MISAPPROPRIATION.

See FRAUD.

MONEYS

Due from members are a debt recoverable from them—s. 11 (3).

MORTGAGES

May be discharged by receipt endorsed, without re-conveyance or re-surrender. This provision does not apply to Scotland or to the Island of Jersey—s. 12 (8).
For form of receipt, see Sched. III. of Act.

NAME OF SOCIETY.

1.—Identity or deceptive similarity of, with that of any existing society under Act, is not allowed—s. 7 (3).
2.—"Limited" is to be the last word of—s. 7 (5).

3.—Publication of—s. 10 (1b).
4.—Change of, by special resolution, with written approval of Registrar—s. 16 (2).
5.—Penalty for not using—s. 18 (2).
6.—Must be provided for by rules of society—Sched. II. (1).

NOMINATION.

As to power of, for sums not exceeding fifty pounds—see s. 11 (5).

NOMINEES.

Provision for payment of, must be set forth in rules of society—Sched. II. (9).

NOTICE

1.—Of cancelling or suspension of registry of societies—s. 8 (3).
2.—Failure by society to give any notice required by Act is an offence—s. 10 (3a).
3.—Of dissolution must be duly advertised—s. 17 (3e).
4.—Of proceedings to set aside a dissolution must be sent to the central office—s. 17 (3f).

OBJECTS.

A society, consisting of seven members at least, may be established without payment of any fee, "for carrying on any labour, trade, or handicraft, whether wholesale or retail, including the buying and selling of land;" also the business of banking, subject to the special provisions contained in the Act—s. 6.
Must be provided for by rules of society—Sched. II. (1).

OBLIGATIONS OF SOCIETIES.

See DUTIES AND OBLIGATIONS.

OFFENCES.

1.—As to what constitutes an Offence—see s. 10 (3).
2.—Offences by societies are deemed to have been also committed by every officer or member of committee; and every act or default constituting an Offence shall, if continued, constitute a new offence during every week it continues—s. 10 (4).

3.—Penalties for—s. 18 (3).
4.—Prosecutions for—s. 19 (1).
5.—Description of—s. 19 (5).

OFFICE.

Every Society shall have a registered Office—give notice to the Registrar of the situation thereof—and of every change thereof—s. 10 (1a).

Situation of, must be provided for by rules of society—Sched. II. (1).

OFFICERS.

1.—Definition of—see s. 3.
2.—An Officer or servant of society may not be appointed nominee by a member for the purpose of having shares transferred to him on the decease of such member, unless such Officer or servant is the husband, wife, father, mother, child, brother, sister, nephew, or niece of the nominator—s. 11 (5).
3.—As to security to be given, and forms of bond to be executed, by Officers in receipt or charge of money—see s. 13 (1), and Sched. III.
4.—As to delivery of accounts of; as to delivery of property and moneys in custody of; and as to cases of neglect or refusal to deliver—see s. 13 (2).
5.—Appointment and removal of, powers and remuneration of, must be provided for by rules of society—Sched. II. (4).

PENALTIES.

For falsification—see s. 18 (1).
For not using the name of the society—see s. 18 (2).
For ordinary offences—see s. 18 (3).
Recovery of—s. 18 (4).

POWERS.

The following powers may, *inter alia,* be taken under the rules of "Land societies," and "Farming and Land societies." A society may:—

(i.) Erect any cottages, houses, or other buildings on any lands held by it;
(ii.) Alter, pull down, and again rebuild, any buildings, whether erected by the society or otherwise vested in it;

(iii.) Manage, lay out, lease, and sub-lease (whether at rack-rent on building, mining, quarrying, or improving leases, or otherwise howsoever, and whether to members of the society or other persons) any lands or buildings held by it ;

(iv.) Dispose of, sell, exchange, mortgage, or lease, whether to members or other persons, any lands or buildings held by it ;

(v.) Work mines or quarries in or under any lands vested in it ;

(vi.) Deal in, produce, or manufacture, any of the materials employed in the construction of buildings ; deal in Agricultural produce ;

(vii.) And do all such things as are incidental or conducive to the attainment of the objects of the society.

PRIVILEGES OF SOCIETIES.

1.—The registration of a society renders it a body corporate with perpetual succession and a common seal, and with limited liability—s. 11 (1).

2.—The rules of society bind the members—s. 11 (2).

3.—Moneys due from members are a debt recoverable from them —s. 11 (3).

4.—Societies enjoy exemption from income tax—s. 11 (4), excepting as is provided in certain cases,—see INCOME TAX.

5.—Members have power of nomination for sums not exceeding £50—s. 11 (5).

6.—Sums not exceeding £50 are payable or transferable at death without administration, if member dies intestate and without a nominee—s. 11 (6).

7.—Payments made after the decease of any member to persons apparently entitled are valid—s. 11 (7).

8.—When trustees are absent, etc., Chief Registrar may order Stock belonging to any society, and standing in the names of such trustees, to be transferred into the names of new trustees—s. 11 (8).

9.—Minors may be members (if over 16 years) unless provision be made in rules of society to the contrary—s. 11 (9).

10.—As to promissory notes and bills of exchange — see s. 11 (10).

11.—Register of members or shares kept by society is *primâ facie* evidence of the particulars entered therein—s. 11 (11).

12.—As to how contracts on behalf of a society may be made, varied, or discharged—see s. 11 (12).

PROFITS

Of society may be applied to any lawful purpose—s. 12 (7).

Mode of application of must be provided for by rules of society—Sched. II. (10).

PROMISSORY NOTES, ETC.

A Promissory Note or bill of exchange shall be deemed to have been made, accepted, or endorsed on behalf of any society, if made, accepted or endorsed in the name of the society, or by or on behalf or account of the society, by any person acting under the authority of the society—s. 11 (10).

Liability under.—Members of co-operative societies should be careful how they sign instruments of this kind, and as to the exact words used. In an action at law on a Promissory Note in the following form:—"We, being members of the executive committee on behalf of the London, &c. Co-operative Society, do *jointly* promise to pay," the persons signing were held personally liable.—*Gray* v. *Raper et al.*; L. R. 1 C. P. 694.

PROPERTY.

Definition of—see s. 3.

Advances to members may be made on security of real or personal property—s. 12 (2).

PROSECUTIONS

For offences in England and Ireland shall be in manner directed by the Summary Jurisdiction Acts—s. 19 (1).

PUBLIC AUDITORS.

See AUDIT.

May be appointed and their rates of remuneration may be determined by Treasury, but the employment of such auditors is not compulsory on any society—s. 21.

RECEIPT

1.—By endorsement, in discharge of mortgages in lieu of reconveyance or resurrender—s. 12 (8).

2.—As to registration of Receipt where mortgage or other assurance has been registered under any Act for the registration or record of deeds or titles, or is of copyholds or lands of customary tenure, and entered on any Court rolls—see s. 12 (9).

3.—Form of—Sched. III.

RECONVEYANCE.

See RECEIPT.

REFUSAL TO REGISTER.

Appeal from Registrar's Refusal to Register society or rules, how and where to be made—s. 7 (8).

If over-ruled, acknowledgment of registry is to be given—s. 7 (9).

REGISTER

Of members or shares kept by society is *primâ facie* evidence of the particulars entered therein—s. 11 (11).

REGISTERED SOCIETY.

Definition of—see s. 3.

REGISTRAR.

Definition of—see s. 3.

REGISTRATION.

See INCORPORATION.

REGISTRY

Of societies, acknowledgment of by Registrar—s. 7 (7).

Of amendment of rules—s. 9 (2), (4).

Of mortgage receipt—s. 12 (9).

Of special resolutions—s. 16 (6), (7).

REGISTRY OF SOCIETIES.

1.—No society can be Registered which does not consist of seven persons at least—s. 7 (1).

2.—Application for Registry must be signed by seven members and the secretary, and must be accompanied by two written or printed copies of society's rules—s. 7 (2).

3.—Identity or deceptive similarity of name of society with that of any existing society under Act is not allowed; and no change thereof can be made without sanction of Registrar—s. 7 (3).

4.—"Limited" is to be the last word in name of society—s. 7 (5).

5.—As to Registry of Societies doing business in more than one country—see s. 7 (6).

6.—Acknowledgment of Registry is issued by Registrar on his being satisfied that provisions of Act as to Registry have been complied with—s. 7 (7).

7.—As to appeals from refusal to Register—see s. 7 (8).

8.—If refusal of Registry is over-ruled on appeal, acknowledgment of Registry shall be given—s. 7 (9).

9.—The acknowledgment of Registry is conclusive evidence that society has been duly registered—s. 7 (10).

10.—The Registrar may cancel the Registry of any society, (i.) if he thinks fit, at the request of the society; (ii.) with approval of Treasury, on proof that acknowledgment of Registry has been obtained by fraud or mistake, or that society exists for an illegal purpose, or has wilfully violated any of the provisions of Act, or has ceased to exist—s. 8 (1).

11.—The Registrar may suspend the Registry of any society for any term not exceeding three months, in any case in which he might, with approval of Treasury, cancel such Registry—s. 8 (2).

12.—As to notice required to be given of cancelling or suspension of Registry—see s. 8 (3).

13.—The provision in Act as to appeals from refusal of Registry (s. 7 (8)) is applicable to cancelling or suspension—s. 8 (4).

14.—Effect of cancelling or suspension—s. 8 (5).

15.—The Registry of Society under Act becomes void if the society subsequently becomes Registered as, amalgamates with, or transfers all its engagements to, a company—s. 16 (8).

REPEAL OF ACTS.

See ACTS REPEALED.

RESOLUTION, SPECIAL.

1.—Definition of—see s. 16 (1).
2.—Society may change its name by—s. 16 (2).
3.—Societies may become amalgamated or transfer engagements by—s. 16 (3).
4.—Society may convert itself into a company by, or amalgamate with, or transfer its engagements to, a company by—s. 16 (4), (5), (7), (8).
5.—A Special Resolution shall not take effect until a copy of same shall have been sent to the central office and registered there—s. 16 (6).

RETURNS, ANNUAL.

1.—Every society shall send to the Registrar a general statement (to be called the Annual Return) of its receipts and expenditure, funds and effects, as audited—s. 10 (1d); and shall supply gratuitously, on application, to every member or person interested in its funds, a copy of such Annual Return —s. 10 (1f).
2.—Failure by society to send any, or making false or insufficient Return, is an offence—s. 10 (3 a), (3 c).
3.—Shall be in such form and shall contain such particulars as Chief Registrar prescribes—s. 10 (5).

RULES AND AMENDMENTS.

1.—Definition of "Rules" and "Amendment of Rule"—see s. 3.
2.—Two written or printed copies of the Rules are to be sent to the Registrar, when application is made to register the society—s. 7 (2).
3.—The Rules of every society are to contain provisions in respect of the several matters mentioned in Schedule II. of Act—s. 9 (1).
4.—Amendments of Rules are not valid until registered, for which purpose copies of the same, signed by three members and the secretary, shall be sent to Registrar—s. 9 (2).
5.—The provision in the Act as to appeals from refusal of registry (s. 7 (8)) is applicable to Amendments of Rules—s. 9 (3).

6.—Acknowledgment of registry of Amendments of Rules is conclusive evidence of registry of same—s. 9 (4).
7.—A copy of Rules shall be delivered by society to every person on demand on payment of a sum not exceeding 1*s.*—s. 9 (5).
8.—Delivery of untrue Rules, with intent to mislead or defraud, is a misdemeanor—s. 9 (6).
9.—The Rules of society bind the members—s. 11 (2).
10.—Mode of making, altering, or rescinding Rules, must be provided for by Rules of society—Sched. II. (3).

SCHEDULES.

The Act contains the following Schedules :—
I.—Acts and Enactments repealed.
II.—Matters to be provided for by the rules of societies registered under Act.
III.—Form of Statement to be made out by a society carrying on the Business of Banking; Forms of Bond; and Form of Receipt to be endorsed on Mortgage or Further Charge.
IV.—Acknowledgment of Registry of Society; Acknowledgment of Registry of Amendment of Rules.

SCOTLAND.

1.—Definition of "Court of Summary Jurisdiction" in—see s. 3.
2.—Definition of "Summary Jurisdiction Acts" in—see s. 3.
3.—Provisions in Act as to discharge of Mortgages do not apply to—s. 12 (8).
4.—Appeals in, how and where made—s. 19 (7).

SEAL.

Provisions for custody, use and device of Seal (which shall in all cases bear the registered name of society) must be set forth in rules of society—Sched. II. (11).

SECURITY

To be given by officers of society in receipt of money—s. 13 (1).
Forms of bond to be executed by officers giving Security will be found in Sched. III. of Act.

SERVANTS.

See OFFICERS.

SHARES.

See INTEREST OF MEMBERS.

1.—The interest of a member in the Funds of society is not to exceed £200—s. 6.

[This apparently means shares. See Schedule II. (5), and p. 14, note.]

2.—A society registered under the Act, however, which is a member of another society is excepted from this limitation—s. 6.

3.—It appears from Sched. II. (7) that Shares which are transferable cannot be withdrawable, and *vice versâ*. See WITHDRAWAL.

4.—Determination whether Shares are transferable or withdrawable must be provided for by rules of society—Sched. II. (7).

5.—Register of, kept by society, is *primâ facie* evidence of the particulars entered therein—s. 11 (11).

SPECIAL MEETINGS.

1.—Upon the application of a certain number of members of a society, proportionate with whole number, Registrar may, with consent of Treasury, call a Special Meeting of the society—s. 15 (1b).

2.—Application for calling of Special Meeting must be supported by evidence showing good reason—s. 15 (2); and applicants may be ordered to give security for costs—s. 15 (3).

3.—Expenses incidental to the Special Meeting shall be defrayed by applicants, or out of society's funds, as Registrar directs—s. 15 (4).

SPECIAL RESOLUTION.

See RESOLUTION.

STAMP DUTIES.

[The exemptions from stamp duties on cheques, drafts, receipts, and other documents, required by the Acts or rules of societies, previously in force, are now withdrawn.]

STOCK.

As to transfer of Stock belonging to any society in case of absence, bankruptcy, etc., of trustees—see s. 11 (8).

SUMMARY PROCEDURE AND APPEALS.

Prosecutions for Offences, etc.—s. 19 (1).
Summary orders—s. 19 (2).
Summary jurisdiction in England and Ireland—s. 19 (3).
Summary jurisdiction in Scotland—s. 19 (4).
Description of Offences—s. 19 (5).
Appeals in England or Ireland—s. 19 (6).
Appeals in Scotland—s. 19 (7).

SUMMARY JURISDICTION ACTS.

Definition of—see s. 3.

SUPREME COURT.

Case for opinion of, may be stated by Court or Registrar at the request of either party to a dispute—s. 14 (6).

SUSPENSION OF REGISTRY.

See REGISTRY OF SOCIETIES.

TRADE.

See LABOUR.

TRANSFER OF ENGAGEMENTS.

See AMALGAMATION.

Any society may, by special resolution, Transfer its Engagements to any other registered society which may undertake to fulfil the Engagements of such society—s. 16 (3), (5).

So also a society may, by special resolution, determine to Transfer its Engagements to any company under the Companies Acts, in which case its registry under Act becomes void—s. 16 (4), (5), (8).

TRANSFER OF SHARES.

See WITHDRAWAL.

From the wording of section 11 (5), referring to power of Nomination, the rules may direct that the shares of a society

shall not be transferable, with this exception that, if death occur after nomination, a right of transfer arises with regard to the shares comprised in such nomination; as also in the case of intestacy—s. 11 (6).

2.—Determination whether Shares shall be Transferable, provision for the form of Transfer, registration, etc., must be set forth in rules of society—Sched. II. (7).

TRUSTEES.

In case of absence, bankruptcy, etc., of Trustees Chief Registrar may order Stock, belonging to any society and standing in the names of such Trustees, to be transferred into the names of new Trustees—s. 11 (8).

Trustees, not exceeding three in number, may be appointed by the society for the purpose of being admitted as tenants in respect of copyhold or customary estate—s. 12 (3).

UNION OF SOCIETIES.

See AMALGAMATION.

UNTRUE RULES.

Delivery of, with intent to mislead or defraud, is a misdemeanor —s. 9 (6).

VOTING.

Right of, must be provided for by rules of society—Sched. II. (3).

WINDING-UP.

See also DISSOLUTION.

1.—A society may be dissolved by an order of the Court to Wind-up the society, or by a resolution for the voluntary Winding-up thereof, made as is directed in regard to companies by the Companies Act, 1862, the provisions of which statute apply to any such order or resolution; with this exception, that the Court having jurisdiction in the Winding-up shall be the County Court—s. 17 (1).

2.—Where a society is Wound-up the liability of a present or past member of the society to contribute for payment of the debts and liabilities of the society, the expenses of Winding-up, and the adjustment of the rights of contributories amongst themselves, shall be qualified as follows :—

(*a.*) No individual, society, or company who or which has ceased to be a member for one year or upwards prior to the commencement of the Winding-up shall be liable to contribute :

(*b.*) No individual, society, or company shall be liable to contribute in respect of any debt or liability contracted after he or it ceased to be a member :

(*c.*) No individual, society, or company not a member shall be liable to contribute, unless it appears to the Court that the contributions of the existing members are insufficient to satisfy the just demands on the society :

(*d.*) No contribution shall be required from any individual, society, or company exceeding the amount, if any, unpaid on the shares in respect of which he or it is liable as a past or present member :

(*e.*) An individual, society, or company shall be taken to have ceased to be a member, in respect of any withdrawable share withdrawn, from the date of the notice or application for withdrawal—s. 17 (2).

WITHDRAWAL.

See TRANSFER OF SHARES.

1.—Societies having *withdrawable* share capital shall not carry on business of Banking—s. 10 (2a).

2.—An individual, society, or company shall, in case of winding-up, be taken to have ceased to be a member, in respect of any withdrawable share withdrawn, from the date of the notice or application for withdrawal—s. 17 (2e).

3.—Determination whether shares shall be withdrawable, and provision for paying balance due on withdrawal, must be set forth in rules of society—Sched. II. (7).

4.—Determination whether and how members may withdraw from the society must be provided for by rules of society—Sched. II. (9).

The power of withdrawing shares is mentioned only in two sections of the Act (viz., ss. 10 (2a) and 17 (2)), and in the 2nd Schedule.

It appears from the Schedule (although the point is one not wholly free from doubt, and has never been decided by a Court of law), that the shares must be either withdrawable or transferable, but cannot possess *both* privileges. In other words, that the principle allowed to building societies,—*viz.*, that the same shares may be both withdrawable or transferable,—has been omitted by the legislature in the Act for Industrial and Provident Societies.

The motive for this legislative distinction is difficult to conceive, for no bad consequence could have resulted from allowing members to *transfer* their withdrawable shares. The effect would be no lessening of a society's stability.

YORK.

The several ridings of the county of York, respectively, shall be deemed to be counties—s. 3.

The Statute contains, also, provisions as to the power of the Treasury to make regulations for carrying out the Act, and respecting the duties and functions of the Registrar.

PART II.

THE INDUSTRIAL AND PROVIDENT SOCIETIES ACT, 1876.

(39 & 40 VICT. c. 45.)

THE INDUSTRIAL AND PROVIDENT SOCIETIES ACT, 1876.

(39 & 40 Vict. c. 45.)

ARRANGEMENT OF CLAUSES.

Clause.

Clause.

Clause.

An Act to consolidate and amend the laws relating to Industrial and Provident societies. [11th August, 1876.]

WHEREAS it is expedient to consolidate and amend the law relating to industrial and provident societies, and to assimilate the same in certain respects to the law relating to friendly societies:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. *Short title of Act.*] This Act may be cited as "The Industrial and Provident Societies Act, 1876."

2. *Extent of Act.*] This Act shall extend to Great Britain and Ireland, and the Channel Islands.

3. *Definitions.*] In this Act, if not inconsistent with the context, the following terms shall have the meanings hereinafter respectively assigned to them:

"The Treasury" shall mean the Lords Commissioners of Her Majesty's Treasury:

"England" shall include the Channel Islands (except as hereinafter provided):

"The registrar" shall mean for England the central office established by the Friendly Societies Act, 1875, and for Scotland or Ireland the assistant registrar of friendly societies for either country respectively; "the central office" shall mean the central office so established; and "chief registrar" and "assistant registrar" shall mean chief registrar and assistant registrar of friendly societies respectively:

"Country" shall mean England, Scotland, or Ireland, as the case may be:

The several ridings of the county of York, and the several Channel Islands, respectively, shall be deemed to be counties:

"Land" shall include hereditaments, and in Scotland heritable subjects, of whatever description, and chattels real:

"Property" shall mean all real and personal estate (including books and papers):

"Registered society" shall mean a society registered or deemed to be registered under this Act:

"Amendment of rule" shall include a new rule, and a resolution rescinding a rule:

"Rules" shall mean rules for the time being:

"The committee" shall mean the committee of management or other directing body of a society:

"Persons claiming through a member" shall include the heirs, executors, administrators, and assigns of a member, and also his nominees where nomination is allowed:

"Officer" shall extend to any trustee, treasurer, secretary, member of the committee, manager, or servant, other than a servant appointed by the committee, of a society:

"Meeting" shall include (where the rules of a society so allow) a meeting of delegates appointed by members:

For Scotland, "court of summary jurisdiction" shall mean the sheriff court of the county:

"County court" shall mean for Scotland the sheriff court of the county, and for Ireland the Civil Bill Court; for Scotland, "administration" means confirmation, and "misdemeanor" a crime and offence:

"Summary Jurisdiction Acts" shall mean—

As to England, the Act 11 & 12 Vict. c. 43, and any Acts amending the same:

As to Scotland, the Summary Procedure Act, 1864, and any Acts amending the same:

As to Ireland, within the police district of Dublin metropolis, the Acts regulating the powers and duties of justices of the peace for such district, and of the police of such district; elsewhere in Ireland, the "Petty Sessions (Ireland) Act, 1851," and any Act amending the same:

"Gazette" shall mean the *London Gazette* for England, the *Edinburgh Gazette* for Scotland, and the *Dublin Gazette* for Ireland.

4. *Repeal of Acts in first schedule.*] The Acts set forth in the first schedule hereto shall be repealed from the commencement of this Act; but this repeal, or anything herein contained, shall not affect the past operation of the said Acts, or the force or operation, validity or invalidity, of anything done or suffered, or any bond or security given, right, title, obligation, or liability accrued, contract entered into, or proceedings taken, under any of the said Acts, or under the rules of any society registered or certified thereunder, before the commencement of this Act.

5. *Existing societies.*] Every incorporated society now subsisting whose rules have been registered or certified under any Act relating to industrial and provident societies, shall be deemed to be a society registered under this Act, and its rules shall, so far as the same are not contrary to any express provision of this Act, continue in force until altered or rescinded.

6. *Societies which may be registered.*] The societies which may be registered under this Act are societies (herein called industrial and provident societies) for carrying on any labour, trade, or handicraft, whether wholesale or retail, including the buying and selling of land, but as to the business of banking subject to the provisions hereinafter contained, of which societies no member other than a society registered under this Act shall have or claim an interest in the funds exceeding two hundred pounds sterling.

7. *Registry of societies.*] With respect to the registry of societies, the following provisions shall have effect:

(1.) *To consist of seven persons at least.*] No society can be registered under this Act which does not consist of seven persons at least.

(2.) *The application for registry.*] For the purpose of registry an application to register the society, signed by seven members and the secretary, and two written or printed copies of the rules, shall be sent to the registrar.

(3.) *Identity or deceptive similarity of name not to be allowed.*] No society shall be registered under a name identical with that under which any other existing society is registered, or so nearly resembling such name as to be likely, in the opinion of the registrar, to deceive the members or the public, as to its identity, and no society shall change its name without sanction of the chief or an assistant registrar or otherwise than is hereinafter provided.

(4.) *As to societies registered under former Acts.*] A society registered under the Industrial and Provident Societies Act, 1852, and not registered under the Industrial and Provident Societies Acts, 1862 or 1867, may, on application to the registrar, obtain an acknowledgment of registry under this Act.

(5.) "*Limited*" *to be last word of name.*] The word "limited" shall be the last word in the name of every society registered under this Act.

(6.) *Registry of societies doing business in more than one country.*] Societies carrying or intending to carry on business in more than one country shall be registered in the country in which their registered office, as herein mentioned, is situate; but copies of the rules of such societies, and of all amendments of the same, shall, when registered, be sent to the registrar of each of the other countries, to be recorded by him; and until such rules be so recorded the society shall not be entitled to any of the privileges of this Act in the country in which such rules have not been recorded, and until such amendments of rules be recorded the same shall not take effect in such country.

(7.) *The acknowledgment of registry.*] The registrar, on being satisfied that a society has complied with the provisions as to registry in force under this Act, shall issue to such society an acknowledgment of registry.

(8.) *Appeals from refusal to register.*] If any registrar refuse to register the society or any rules, the society may appeal from such refusal, as follows:

(*a.*) If the assistant registrar for Scotland refuse to register, to either division of the Inner House of the Court of Session:

(*b.*) If the assistant registrar for Ireland refuse to register, to the Court of Queen's Bench at Dublin:

(*c.*) If the central office or the chief registrar refuse to register, to the Court of Queen's Bench in England:

(*d.*) The Court of Session, the Court of Queen's Bench at Dublin, and the Judges of the Court of the Queen's Bench Division of the High Court in England respectively, may make rules or orders as to the form of appeals and the trying thereof and otherwise relating thereto.

(9.) *If refusal overruled, acknowledgment to be given.*] If the refusal of registry be overruled on appeal, an acknowledgment of registry shall thereupon be given to the society by the registrar.

(10.) *Effect of acknowledgment of registry.*] The acknowledgment of registry shall be conclusive evidence that the society therein mentioned is duly registered, unless it be proved that the registry of the society has been suspended or cancelled.

8. *Cancelling and suspension of registry.*] With respect to the cancelling or suspension of registry the following provisions shall have effect:

(1.) *Cancelling.*] The chief registrar, or, in the case of societies registered and doing business in Scotland or Ireland exclusively, the assistant registrar for Scotland or Ireland respectively, may cancel the registry of a society by writing under his hand,—

(*a.*) If he thinks fit, at the request of a society, to be evidenced in such manner as he shall from time to time direct.

(*b.*) With the approval of the Treasury, on proof to his satisfaction that an acknowledgment of registry has been obtained by fraud or mistake, or that a society exists for an illegal purpose, or has wilfully and after notice from a registrar whom it may concern violated any of the provisions of this Act, or has ceased to exist.

(2.) *Suspension.*] The chief or assistant registrar, in any case in which he might, with the approval of the Treasury, cancel the registry of a society, may suspend the same, by writing under his hand, for any term not exceeding three months, and may, with the approval of the Treasury, renew such suspension from time to time for the like period.

(3.) *Notice of cancelling or suspension.*] Not less than two months previous notice in writing, specifying briefly the ground of any proposed cancelling or suspension of registry, shall be given by the chief or

assistant registrar to a society before the registry of the same can be cancelled (except at its request) or suspended; and notice of every cancelling or suspension shall be published in the *Gazette*, and in some newspaper circulating in the county in which the registered office of the society is situated, as soon as practicable after the same takes place.

(4.) *Appeal from cancelling or suspension.*] A society may appeal from the cancelling of its registry, or from any suspension of the same which is renewed after six months, in manner herein provided for appeals from the chief registrar's, or the registrar's refusal to register respectively.

(5.) *Effect of cancelling or suspension.*] A society whose registry has been suspended or cancelled shall from the time of such suspension or cancelling (but if suspended, only whilst such suspension lasts, and subject also to the right of appeal hereby given) absolutely cease to enjoy as such the privileges of a registered society, but without prejudice to any liability actually incurred by such society, which may be enforced against the same as if such suspension or cancelling had not taken place.

9. *Rules and amendments.*] With respect to the rules of societies the following provisions shall have effect:

(1.) *Provisions to be contained in rules.*] The rules of every society sent for registry shall contain provisions in respect of the several matters mentioned in the second schedule to this Act.

(2.) *Amendments to be registered.*] No amendment of a rule made by a registered society shall be valid until the same has been registered under this Act, for which purpose copies of the same, signed by three members and the secretary, shall be sent to the registrar.

(3.) *Provision applicable to amendments.*] The provision herein contained as to appeals from a refusal of registry shall apply to amendments of rules.

(4.) *Acknowledgment of registry of amendments.*] The registrar shall, on being satisfied that any amendment of a rule is not contrary to the provisions of this Act, issue to the society an acknowledgment of registry of the same, which shall be conclusive evidence that the same is duly registered.

(5.) *Copies of rules to be delivered on demand.*] A copy of the rules of a registered society shall be delivered by the society to every person on demand, on payment of a sum not exceeding one shilling.

(6). *Delivery of untrue rules.*] If any person, with intent to mislead or defraud, gives to any other person a copy of any rules, laws, regulations, or other documents, other than the rules for the time being registered under this Act, on the pretence that the same are existing rules of a registered society, or that there are no other rules of such society, or gives to any person a copy of any rules on the pretence that such rules are the rules of a registered society when the society is not registered, the person so offending shall be deemed guilty of a misdemeanor.

10. *Duties and obligations of societies.*] With respect to the duties and obligations of registered societies the following provisions shall have effect:

(1.) Every society shall—

(*a.*) *Registered office.*] Have a registered office to which all communications and notices may be addressed, and send to the registrar notice of the situation of such office, and of every change therein:

(*b.*) *Publication of name.*] Paint or affix, and keep painted or affixed, its name on the outside of every office or place in which the business of the society is carried on, in a conspicuous position, in letters easily legible, and have its name engraven in legible characters on its seal, and have its name mentioned in legible characters in all notices, advertisements, and other official publications of the society, and in all bills of exchange, promissory notes, endorsements, cheques, and orders for money or goods, purporting to be signed by or on behalf of such society, and in all bills of parcels, invoices, receipts, and letters of credit of the society:

(*c.*) *Audit.*] Once at least in every year submit its accounts for audit either to one of the public auditors appointed as herein mentioned, or to two or more persons appointed as the rules of the society provide, who shall have access to all the books and accounts of the society, and shall examine the general statements of the receipts and expenditure, funds and effects of the society, and verify the same with the accounts and vouchers relating thereto, and shall either sign the same as found by them to be correct, duly vouched, and in accordance with law, or specially report to the society in what respects they find it incorrect, unvouched, or not in accordance with law:

(*d.*) *Annual returns.*] Once in every year before the first day of June send to the registrar a general statement (to be called the annual return) of the receipts and expenditure, funds and effects of the society as audited, which shall show separately the expenditure in respect of the several objects of the society, and shall be made out to the thirty-first December then last inclusively, and shall state whether the audit has been conducted by a public auditor appointed as by this Act is provided, and by whom, and if by any person other than a public auditor, shall state the name, address, and calling or profession of each such person, and the manner in which and the authority under which he is appointed, and together therewith shall send a copy of the auditor's report:

(*e.*) *Inspection of books.*] Allow any member or person having an interest in the funds of the society to inspect the books and the names of the members at all reasonable hours at the registered office of the society, or at any place where the same are kept; subject to such regulations as to the time and manner of such inspection as may be made from time to time by the

general meetings of the society, except that no such member or person, unless he be an officer of the society, or be specially authorised by a resolution thereof, shall have the right to inspect a loan or deposit account of any other member without the written consent of such member:

(*f.*) *Supplying copies of annual returns.*] Supply gratuitously to every member or person interested in the funds of the society, on his application, a copy of the last annual return of the society for the time being:

(*g.*) *Balance sheet, &c. to be hung up at office.*] Keep a copy of the last balance sheet for the time being, together with the report of the auditors, always hung up in a conspicuous place at the registered office of the society.

(2.) *Provisions as to banking.*] The following provisions shall apply to the business of banking by societies—

(*a.*) No society which has any withdrawable share capital shall carry on the business of banking:

(*b.*) Every society which carries on the business of banking shall, on the first Mondays in February and August in each year, make out and keep conspicuously hung up in its registered office, and every other place of business belonging to it, a statement in the form in the third schedule hereto annexed, or as near thereto as the circumstances admit:

(*c.*) The taking deposits of not more than five shillings in any one payment, nor more than twenty pounds for any one depositor, payable on not less than two clear days notice, shall not be included in the business of banking within the meaning of this Act; but no society which takes such deposits shall make any payment of withdrawable capital while any claim due on account of any such deposit is unsatisfied.

(3.) *Offences.*] It shall be an offence under this Act if any registered society—

(*a.*) Fails to give any notice, send any return or document, or do or allow to be done any act or thing which the society is by this Act required to give, send, do, or allow to be done:

(*b.*) Wilfully neglects or refuses to do any act or to furnish any information required for the purposes of this Act by the chief or any other registrar or other person authorised under this Act, or does any act or thing forbidden by this Act:

(*c.*) Makes a return or wilfully furnishes information in any respect false or insufficient:

(*d.*) Carries on the business of banking having any withdrawable share capital, or in carrying on such business does not make out and keep conspicuously hung up such statement as is hereinbefore required, or makes any payment of withdrawable capital contrary to the provision hereinbefore contained.

(4.) *Offences by societies to be also offences by officers, &c.*] Every offence by a society under this Act shall be deemed to have been also

committed by every officer of the same bound by the rules thereof to fulfil the duty whereof such offence is a breach, or if there be no such officer, then by every member of the committee of the same, unless such member be proved to have been ignorant of or to have attempted to prevent the commission of such offence; and every act or default under this Act constituting an offence, if continued, shall constitute a new offence in every week during which the same continues.

(5.) *Returns to be in prescribed form.*] Every return and other document required for the purposes of this Act shall be made in such form and shall contain such particulars as the chief registrar prescribes.

(6.) *Recording of documents.*] All documents by this section required to be sent to the registrar shall be deposited with the rules of the societies to which the same respectively relate, and shall be registered or recorded by the registrar, with such observations thereon, if any, as the chief registrar shall direct.

11. *Privileges of societies.*] Registered societies shall be entitled to the following privileges:

(1.) *Incorporation of society with limited liability.*] The registration of a society shall render it a body corporate by the name described in the acknowledgment of registry by which it may sue and be sued, with perpetual succession and a common seal, and with limited liability; and shall vest in the society all property for the time being vested in any person in trust for the society; and all legal proceedings pending by or against the trustees of any such society may be prosecuted by or against the society in its registered name without abatement.

(2.) *Rules to bind the members.*] The rules of the society shall bind the society and all members thereof and all persons claiming through them respectively to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were contained in such rules a covenant on the part of himself, his heirs, executors, and administrators, to conform thereto, subject to the provisions of this Act: Provided that a society registered at the time when this Act comes into operation, or the members thereof, may respectively exercise any power given by this Act, and not made to depend on the provisions of its rules, notwithstanding any provision contained in any rule thereof certified before this Act was passed.

(3.) *Moneys due from members to be a debt recoverable from them.*] All moneys payable by a member to the society shall be a debt due from such member to the society, and shall be recoverable as such either in the county court of the district in which the registered office of the society is situate, or that of the district in which such member resides, at the option of the society.

(4.) *Exemption from income tax.*] The society shall not be chargeable under Schedule (C.) or Schedule (D.) of the Income Tax Acts, but no member of or person employed by the same to whom any profits are paid shall be exempted from any assessment to the said duties to which he would otherwise be liable. [*See Digest*, p. 12, *as to a modification herein made by Statute*, 1880.]

(5.) *Power of nomination for sums not exceeding fifty pounds.*] A member of a society, not being under the age of sixteen years, may, by writing under his hand delivered at or sent to the registered office of the society, nominate any person, not being an officer or servant of the society, unless such officer or servant is the husband, wife, father, mother, child, brother, sister, nephew, or niece of the nominator, to whom his shares in the society shall be transferred at his decease, provided that the amount credited to him in the books of the society does not exceed fifty pounds, and may from time to time revoke or vary such nomination by a writing under his hand similarly delivered or sent, but not otherwise, and every such society shall keep a book wherein the names of all persons so nominated shall be regularly entered, and the shares comprised in any such nomination shall be transferable to the nominee although the rules of the society declare its shares to be generally not transferable; and on receiving satisfactory proof of the death of a nominator the committee of the society shall either transfer the shares in manner directed on such nomination or pay to every person entitled thereunder the full value of his interest, at their option, unless the shares if transferred to any such nominee would raise his interest in the society to an amount exceeding two hundred pounds sterling, in which case they shall pay him the full value of such shares, not exceeding the sum aforesaid.

(6.) *Distribution of sums not exceeding fifty pounds.*] If any member of a society, entitled to an interest in the society not exceeding fifty pounds, dies intestate and without having made any nomination under this Act which remains unrevoked at his death, such interest shall be transferable or payable, without letters of administration, to or among the persons who appear to a majority of the committee, upon such evidence as they may deem satisfactory, to be entitled by law to receive the same.

(7.) *Payments to persons apparently entitled valid.*] Whenever the committee, after the decease of any member, make any payment or transfer to any person who at the time appears to them to be entitled under this section, the payment or transfer shall be valid and effectual against any demand made upon the committee or the society by any other person.

(8.) *When trustees are absent, &c., registrar may order stock to be transferred.*] When any person, in whose name any stock belonging to any such society transferable at the Bank of England or Bank of Ireland is standing, either jointly with another or others or solely, as a trustee therefor, is absent from Great Britain or Ireland respectively, or becomes bankrupt, or files any petition or executes any deed for liquidation of his affairs by assignment or arrangement, or for composition with his creditors, or becomes a lunatic, or is dead, or has been removed from his office of trustee, or if it be unknown whether such person is living or dead, the chief registrar, on application in writing from the secretary and three members of the society, and on proof satisfactory to him, may direct the transfer of the stock into the names of any other persons as

trustees for the society; and such transfer shall be made by the surviving or continuing trustees, and if there be no such trustee, or if such trustees refuse or be unable to make such transfer, and the chief registrar so direct, then by the Accountant General or Deputy or Assistant Accountant General of the Bank of England or Bank of Ireland, as the case may be; and the Governors and Companies of the Bank of England and Bank of Ireland respectively are hereby indemnified for anything done by them or any of their officers in pursuance of this provision against any claim or demand of any person injuriously affected thereby.

(9.) *Membership of minors.*] A person under the age of twenty-one but above the age of sixteen may be a member of a society, unless provision be made in the rules thereof to the contrary, and may, subject to the rules of the society, enjoy all the rights of a member (except as herein provided), and execute all instruments and give all acquittances necessary to be executed or given under the rules, but shall not be a member of the committee, trustee, manager, or treasurer of the society.

(10.) *Promissory notes and bills of exchange.*] A promissory note or bill of exchange shall be deemed to have been made, accepted, or endorsed on behalf of any society if made, accepted, or endorsed in the name of the society, or by or on behalf or account of the society, by any person acting under the authority of the society.

(11.) *Register of members or shares.*] Any register or list of members or shares kept by any society shall be *primâ facie* evidence of any of the following particulars entered therein:

(*a.*) The names, addresses, and occupations of the members, the number of shares held by them respectively, the numbers of such shares, if they are distinguished by numbers, and the amount paid or agreed to be considered as paid on any such shares:

(*b.*) The date at which the name of any person, company, or society was entered in such register or list as a member:

(*c.*) The date at which any such person, company, or society ceased to be a member.

(12.) *Contracts how made.*] Contracts on behalf of the society may be made, varied, or discharged as follows:

(*a.*) Any contract, which if made between private persons would be by law required to be in writing, and if made according to the English law to be under seal, may be made on behalf of the society in writing under the common seal of the society, and may in the same manner be varied or discharged:

(*b.*) Any contract, which if made between private persons would be by law required to be in writing and signed by the persons to be charged therewith, may be made on behalf of the society in writing by any person acting under the express or implied authority of the society, and may in the same manner be varied or discharged:

(*c.*) Any contract under seal, which if made between private persons might be varied or discharged at law or in equity by a writing not under seal signed by any person interested therein, may be similarly varied or discharged on behalf of the society by a writing not under seal signed by any person acting under the express or implied authority of the society:

(*d.*) Any contract, which if made between private persons would be by law valid though made by parol only and not reduced into writing, may be made by parol on behalf of the society by any person acting under the express or implied authority of the society, and may in the same manner be varied or discharged:

(*e.*) A signature purporting to be made by a person holding any office in the society attached to a writing whereby any contract purports to be made, varied, or discharged by or on behalf of the society shall *primâ facie* be taken to be the signature of a person holding at the time when the signature was made the office so stated:

And all contracts which may be or have been made, varied, or discharged, according to the provisions herein contained, shall, so far as concerns the form thereof, be effectual in law and binding on the society and all other parties thereto, their heirs, executors, or administrators, as the case may be.

12. *Property and funds of societies.*] With respect to the property and funds of registered societies, the following provisions shall have effect:

(1.) *Holding of land.*] A society may (if its rules do not direct otherotherwise) hold, purchase, or take on lease in its own name any land, and may sell, exchange, mortgage, lease, or build upon the same (with power to alter and pull down buildings and again rebuild), and no purchaser, assignee, mortgagee, or tenant shall be bound to inquire as to the authority for any such sale, exchange, mortgage, or lease by the society, and the receipt of the society shall be a discharge for all moneys arising from or in connexion with such sale, exchange, mortgage, or lease.

(2.) *Advances to members.*] The rules may provide for the advancing of money by the society to members on the security of real or personal property.

(3.) *As to copyholds.*] Where any society is entitled in equity to any hereditaments of copyhold or customary tenure, either absolutely or by way of mortgage or security, the lord of the manor of which the same are held shall from time to time, if the society so require, admit such persons (not to exceed three) as such society appoints, to be trustees on its behalf, as tenants in respect of such hereditatments, on payment of the usual fines, fees, and other dues payable on the admission of a single tenant, or may admit the society as tenant in respect of the same on payment of such special fine or compensation, in lieu of fine and fees, as may be agreed upon between such lord and the society.

(4.) *Investments.*] A society may, if its rules so allow, invest any part of its capital in the shares or on the security of any other society registered under this Act or under the Building Societies Acts, or of any company registered under the Companies Acts or incorporated by Act of Parliament or by charter, provided that no such investment be made in the shares of any society or company other than one with limited liability, and a society so investing may make such investment in its registered name and shall be deemed to be a person within the meaning of the Companies Acts, 1862 and 1867, and the Building Societies Act, 1874, and any investment made before the passing of this Act which would have been valid if this Act had been then in force is hereby made valid and confirmed.

(5.) *Other corporate bodies.*] Any other body corporate may, if its regulations permit, hold shares by its corporate name in a society.

(6.) *Forms.*] In the rules or any schedule thereto may be set forth the forms of conveyance, surrender, admittance, mortgage, transfer, agreement, bond, or other instrument necessary for carrying the purposes of the society into effect.

(7.) *Application of profits.*] The profits of the society may be applied to any lawful purpose.

(8.) *Discharge of mortgages by receipt endorsed.*] A receipt under the hands of two members of the committee of the society, countersigned by the secretary, in the form contained in the third schedule to this Act, or in any form specified by the rules of the society or any schedule thereto, for all moneys secured to the society by any mortgage or other assurance endorsed upon or annexed to such mortgage or other assurance, shall vacate the same, and vest the property therein comprised in the person entitled to the equity of redemption of the same, without reconveyance or resurrender; but this provision shall not apply to Scotland or to the Island of Jersey.

(9.) *Registration of receipt.*] If such mortgage or other assurance has been registered under any Act for the registration or record of deeds or titles, or is of copyholds or lands of customary tenure and entered on any court rolls, the registrar under such Act, or recording officer, or steward of the manor, or keeper of the register, shall on production of such receipt, verified by oath of any person, enter satisfaction on the register or on the court rolls respectively of such mortgage or of the charge made by such assurance, and shall grant a certificate, either upon such mortgage or assurance or separately to the like effect, which certificate shall be received in evidence in all courts and proceedings without further proof, and such registrar, recording officer, steward, or keeper of the register shall be entitled to a fee of two shillings and sixpence for making the said entry and granting the said certificate, and such fee shall in Ireland be paid by stamps, and applied as the other fees of the Registry of Deeds Office and Record of Title Office are by law directed to be paid and applied.

(10.) *Punishment of fraud or misappropriation.*] If any person obtains possession by false representation or imposition of any property of a

society, or having the same in his possession withholds or misapplies the same, or wilfully applies any part thereof to purposes other than those expressed or directed in the rules of the society and authorised by this Act, he shall, on the complaint of the society, or of any member authorised by the society, or the committee thereof, or by the central office, or of the chief registrar or any assistant registrar by his authority, be liable on summary conviction to a penalty not exceeding twenty pounds with costs not exceeding twenty shillings, and to be ordered to deliver up all such property or to repay all moneys applied improperly, and in default of such delivery or repayment, or of the payment of such penalty and costs aforesaid, to be imprisoned, with or without hard labour, for any time not exceeding three months; but nothing herein contained shall prevent any such person from being proceeded against by way of indictment, if not previously convicted of the same offence under the provisions of this Act.

13. *Officers in receipt or charge of money.*] With respect to officers of registered societies having receipt or charge of money, the following provisions shall have effect:—

(1.) *Security to be given.*] Every officer, if the rules of the society require, shall, before taking upon himself the execution of his office, become bound, either with or without a surety as the committee require, in a bond according to one of the forms set forth in the third schedule to this Act, or such other form as the committee of the society approve, or give the security of a guarantee society, in such sum as the committee directs, conditioned for his rendering a just and true account of all moneys received and paid by him on account of the society at such times as its rules appoint, or as the society or the committee thereof require him to do, and for the payment by him of all sums due from him to the society.

(2.) *Accounts of officers.*] Every officer, his executors or administrators, shall, at such times as by the rules of the society he should render account, or upon demand made, or notice in writing given or left at his last or usual place of residence, give in his account as may be required by the society, or by the committee thereof, to be examined and allowed or disallowed by them, and shall, on the like demand or notice, pay over all moneys and deliver all property for the time being in his hands or custody to such person as the society or the committee appoint; and in case of any neglect or refusal to deliver such account, or to pay over such moneys or to deliver such property in manner aforesaid, the society may sue upon the bond or security before mentioned, or may apply to the county court (which may proceed in a summary way), or to a court of summary jurisdiction, and the order of either such court shall be final and conclusive.

14. *Disputes.*] With respect to disputes concerning registered societies the following provisions shall have effect:—

(1.) *To be decided by rules of society.*] Every dispute between a mem-

ber or person claiming through a member or under the rules of a registered society, and the society or an officer thereof, shall be decided in manner directed by the rules of the society, if they contain any such direction, and the decision so made shall be binding and conclusive on all parties without appeal, and shall not be removable into any court of law or restrainable by injunction; and application for the enforcement thereof may be made to the county court.

(2.) *May be referred to chief registrar.*] The parties to a dispute in a society may, by consent (unless the rules of such society expressly forbid it), refer such dispute to the chief registrar, or to the assistant registrar in Scotland or Ireland, who shall, with the consent of the Treasury, either by himself or by any other registrar, hear and determine such dispute, and shall have power to order the expenses of determining the same to be paid either out of the funds of the society or by such parties to the dispute as he shall think fit, and such determination and order shall have the same effect and be enforceable in like manner as a decision made in the manner directed by the rules of the society.

(3.) *Chief registrar may administer oaths, &c.*] The chief or other registrar to whom any dispute is referred may administer oaths, and may require the attendance of all parties concerned and of witnesses, and the production of all books and documents relating to the matter in question; and any person refusing to attend, or to produce any documents, or to give evidence before such chief or other registrar, shall be guilty of an offence under this Act.

(4.) *Reference to justices.*] Where the rules of a society direct that disputes shall be referred to justices, the dispute shall be determined by a court of summary jurisdiction:

Provided that in every case of dispute cognizable under the rules of a society by a court of summary jurisdiction, it shall be lawful for the parties thereto to enter into a consent referring such dispute to the county court, which may hear and determine the matter in dispute.

(5.) *Application to county courts, &c.*] Where the rules contain no direction as to disputes, or where no decision is made on a dispute within forty days after application to the society for a reference under its rules, the member or person aggrieved may apply either to the county court, or to a court of summary jurisdiction, which may hear and determine the matter in dispute.

(6.) *Case for opinion of Supreme Court, &c.*] The court, chief or other registrar, may, at the request of either party, state a case for the opinion in England of the Supreme Court of Judicature, in Scotland of either division of the Inner House of the Court of Session, or in Ireland of one of the superior courts of common law at Dublin, on any question of law, and may also grant to either party such discovery as to documents and otherwise, or such inspection of documents, and in Scotland may grant warrant for the recovery of documents and examination of havers, as might be granted by any court of law or equity, such discovery to be made on behalf of the society by such officer of the same as such court or registrar may determine.

15. *Special powers of registrars to be exercised on application from members.*] With respect to the inspection of the affairs of registered societies, the following provisions shall have effect :—

(1.) Upon the application of one fifth of the whole number of members of a registered society, or of one hundred members in the case of a society of one thousand members and not exceeding ten thousand, or of five hundred members in the case of a society of more than ten thousand members, the chief registrar, or, in the case of societies registered and doing business exclusively in Scotland or Ireland, the assistant registrar for Scotland or Ireland respectively, but with the consent of the Treasury in every case, may—

(*a.*) *Inspectors.*] Appoint one or more inspectors to examine into the affairs of such society, and to report thereon, who may require the production of all or any of the books and documents of the society, and may examine on oath its officers, members, agents, and servants in relation to its business, and may administer such oath accordingly:

(*b.*) *Special meetings.*] Call a special meeting of the society in such manner and at such time and place as the chief registrar, or such assistant registrar, may direct, and may direct what matters shall be discussed and determined on at such meeting, which shall have all the powers of a meeting called according to the rules of the society, and shall in all cases have power to appoint its own chairman, any rule of the society to the contrary notwithstanding.

(2.) *Application to be supported by evidence.*] The application herein mentioned shall be supported by such evidence, for the purpose of showing that the applicants have good reason for requiring such inspection to be made or meeting to be called, and that they are not actuated by malicious motives in their application, and such notice thereof shall be given to the society, as the chief registrar shall direct.

(3.) *Security for costs.*] The chief registrar or such assistant registrar may, if he think fit, require the applicants to give security for the costs of the proposed inspection or meeting, before appointing any inspector or calling such meeting.

(4.) *Expenses.*] All expenses of and incidental to any such inspection or meeting shall be defrayed either by the members applying for the same, or out of the funds of the society, as the chief registrar or such assistant registrar shall direct.

16. *Special resolutions, and proceedings which may be taken thereon.*] With respect to special resolutions by registered societies, and to the proceedings which may be taken by virtue thereof, the following provisions shall have effect :—

(1.) *Special resolutions.*] A special resolution is one which is passed by a majority of not less than three fourths of such members of a society for the time being entitled under the rules to vote as may be present in person or by proxy (where the rules allow proxies) at any general meet-

ing of which notice specifying the intention to propose such resolutions has been duly given according to the rules, and which resolution is confirmed by a majority of such members for the time being entitled under the rules to votes as may be present, in person or by proxy, at a subsequent general meeting of which notice has been duly given, held not less than fourteen days nor more than one month from the day of the meeting at which such resolution was first passed. At any meeting mentioned in this section a declaration by the chairman that the resolution has been carried shall be deemed conclusive evidence of the fact.

(2.) *Change of name.*] A society may, by special resolution, with the approval in writing of the chief registrar, or, in the case of societies registered and doing business exclusively in Scotland or Ireland, the assistant registrar for Scotland or Ireland respectively, change its name; but no such change shall affect any right or obligation of the society, or of any member thereof, and any pending legal proceedings may be continued by or against the society, notwithstanding its new name.

(3.) *Amalgamation of societies.*] Any two or more societies may, by special resolution of both or all such societies, become amalgamated together as one society, with or without any dissolution or division of the funds of such societies or either of them; and any society may by special resolution transfer its engagements to any other registered society which may undertake to fulfil the engagements of such society.

(4.) *Conversion of societies into companies, &c.*] A society may by special resolution determine to convert itself into a company under the Companies Acts, or to amalgamate with or transfer its engagements to any such company.

(5.) *Rights of creditors.*] No amalgamation or transfer of engagements shall prejudice any right of a creditor of either or any society party thereto.

(6.) *Registration of special resolutions.*] A copy of every special resolution for any of the purposes mentioned in this section, signed by the chairman of the meeting and countersigned by the secretary, shall be sent to the central office and registered there, and until such copy is so registered, such special resolution shall not take effect.

(7.) *Registration of copy of special resolution as memorandum of association.*] If a special resolution for converting a society into a company contains the particulars by the Companies Act, 1862, required to be contained in the memorandum of association of a company, and a copy thereof has been registered at the central office, a copy of such resolution under the seal or stamp of the central office shall have the same effect as a memorandum of association duly signed and attested under the said Act.

(8.) *Registry of society under Act to become void on registration as a company, &c.*] If a society is registered as, or amalgamates with, or transfers all its engagements to a company, the registry of such society under this Act shall thereupon become void, and the same shall be cancelled by the chief registrar or by the assistant registrar for Scotland or Ireland under his direction; but the registration of a society as a company

shall not affect any right or claim for the time being subsisting against such society, or any penalty for the time being incurred by such society; and for the purpose of enforcing any such right, claim, or penalty, the society may be sued and proceeded against in the same manner as if it had not become registered as a company; and every such right or claim, or the liability to such penalty, shall have priority as against the property of such company, over all other rights or claims against or liabilities of such company.

17. *Dissolution of societies.*] With respect to the dissolution of registered societies, the following provisions shall have effect:—

(1.) *How societies may be dissolved.*] A society may be dissolved—

By an order to wind up the society, or a resolution for the winding up thereof, made as is directed in regard to companies by the Companies Act, 1862, the provisions whereof shall apply to any such order or resolution, except that the court having jurisdiction in the winding up shall be the county court, and that the term registrar shall for the purpose of such winding up mean the central office in England, or the assistant registrar in Scotland or Ireland, as the case may be; or,

By the consent of three fourths of the members, testified by their signatures to an instrument of dissolution.

(2.) *Liability of the members.*] Where a society is wound up the liability of a present or past member of the society to contribute for payment of the debts and liabilities of the society, the expenses of winding up, and the adjustment of the rights of contributories amongst themselves, shall be qualified as follows:—

(*a.*) No individual, society, or company who or which has ceased to be a member for one year or upwards prior to the commencement of the winding up shall be liable to contribute:

(*b.*) No individual, society, or company shall be liable to contribute in respect of any debt or liability contracted after he or it ceased to be a member:

(*c.*) No individual, society, or company not a member shall be liable to contribute, unless it appears to the court that the contributions of the existing members are insufficient to satisfy the just demands on the society:

(*d.*) No contribution shall be required from any individual, society, or company exceeding the amount, if any, unpaid on the shares in respect of which he or it is liable as a past or present member:

(*e.*) An individual, society, or company shall be taken to have ceased to be a member, in respect of any withdrawable share withdrawn, from the date of the notice or application for withdrawal.

(3.) *Contents of instrument of dissolution.*] Where a society is terminated by an instrument of dissolution the following provisions shall apply:—

(*a.*) The instrument of dissolution shall set forth the liabilities and assets of the society in detail, the number of members and the nature of their interests in the society respectively, the claims of creditors (if any), and the provision to be made for their payment, and the intended appropriation or division of the funds and property of the society, unless the same be stated in the instrument of dissolution to be left to the award of the chief registrar:

(*b.*) *Alterations.*] Alterations in the instrument of dissolution may be made with the like consents as hereinbefore provided, and testified in the same manner:

(*c.*) *Statutory declaration.*] A statutory declaration shall be made by three members and the secretary of the society that the provisions of this Act have been complied with, and shall be sent to the registrar with the instrument of dissolution; and any person knowingly making a false or fraudulent declaration in the matter shall be guilty of a misdemeanor:

(*d.*) *Registry of instrument of dissolution.*] The instrument of dissolution and all alterations therein shall be registered in manner herein provided for the registry of rules, and shall be binding upon all the members of the society:

(*e.*) *Notice of dissolution.*] The registrar shall cause a notice of the dissolution to be advertised at the expense of the society in the *Gazette* and in some newspaper circulating in the county in which the registered office of the society is situated; and unless within three months from the date of the *Gazette* in which such advertisement appears, a member or other person interested in or having any claim on the funds of the society commences proceedings to set aside the dissolution of the society in the county court of the district where the registered office of the society is situate, and such dissolution is set aside accordingly, the society shall be legally dissolved from the date of such advertisement, and the requisite consents to the instrument of dissolution shall be considered to have been duly obtained without proof of the signatures thereto:

(*f.*) *Notice of proceedings to set aside a dissolution.*] Notice shall be sent to the central office of any proceeding to set aside the dissolution of a society, not less than seven days before it is commenced, by the person by whom it is taken, or of any order setting it aside, within seven days after it is made by the society.

18. *Penalties.*] With respect to penalties under this Act, the following provisions shall have effect:

(1.) *Penalty for falsification.*] If any person wilfully makes, orders, or allows to be made any entry or erasure in, or omission from any balance sheet of a registered society, or any contribution or collecting book, or any return or document required to be sent, produced, or

delivered for the purposes of this Act, with intent to falsify the same, or to evade any of the provisions of this Act, he shall be liable to a penalty not exceeding fifty pounds.

(2.) *Not using the name of the society.*] If any officer of the society, or any person on its behalf, uses any seal purporting to be a seal of the society, whereon its name is not so engraved as aforesaid, or issues or authorises the issue of any notice, advertisement, or other official publication of the society, or signs or authorises to be signed on behalf of the society any bill of exchange, promissory note, endorsement, cheque, order for money or goods, or issues or authorises to be issued any bills of parcels, invoice, receipt, or letters of credit of the society, wherein its name is not mentioned in manner aforesaid, he shall be liable to a penalty of fifty pounds, and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money or goods for the amount thereof unless the same is duly paid by the society.

(3.) *Penalties for ordinary offences.*] Every society, officer or member of a society, or other person guilty of an offence under this Act for which no penalty is expressly provided herein shall be liable to a penalty of not less than one pound and not more than five pounds.

(4.) *Recovery of penalties.*] The penalties imposed or to be imposed (1) by this Act, (2) by any regulations under the same, or (3) by the rules of a registered society, shall be recoverable in a court of summary jurisdiction, and at the suit, in cases (1) and (2), of the chief registrar, or of any assistant registrar, or of any person aggrieved, and, in case (3), of the society.

19. *Summary procedure and appeals.*] With respect to summary procedure and appeals from orders or convictions thereon made, the following provisions shall have effect:

(1.) *Prosecution for offences, &c.*] In England and Ireland all offences and penalties under this Act may be prosecuted and recovered, in the manner directed by the Summary Jurisdiction Acts, as respects a prosecution against a society or its officers, in the place where the registered office of the society is, or where the offence has been committed, or, as respects a prosecution against any person other than a society or its officers, in the place where such person is resident at the time of the institution of such prosecution, or where the offence was committed.

(2.) *Summary orders.*] In England and Ireland summary orders under this Act may be made and enforced on complaint before a court of summary jurisdiction in the manner provided by the Summary Jurisdiction Acts.

(3.) *Summary jurisdiction in England and Ireland.*] The court of summary jurisdiction, when hearing and determining an information or complaint, shall consist as follows:

In England—

(*a.*) In any place within the jurisdiction of a metropolitan police

magistrate or other stipendiary magistrate, of such magistrate or his substitute:

(*b.*) In the city of London, of the Lord Mayor or any alderman of that city:

(*c.*) In any other place, of two or more justices of the peace sitting in petty sessions.

In Ireland—

(*a.*) In the police district of Dublin metropolis, of a divisional justice:

(*b.*) In any other place, of two or more justices of the peace sitting in petty sessions.

(4.) *Summary jurisdiction in Scotland.*] In Scotland—

(*a.*) All offences and penalties under this Act may be prosecuted and recovered by the procurator fiscal of the county in the sheriff court, under the provisions of the Summary Procedure Act, 1864:

(*b.*) Summary orders may be made and enforced on complaint in the sheriff court:

(*c.*) All penalties may be enforced in default of payment by imprisonment for a term to be specified in the order or conviction, but not exceeding three months:

(*d.*) All penalties recovered shall be paid to the sheriff clerk, and by him accounted for and paid to the Queen's and Lord Treasurer's Remembrancer on behalf of the Crown:

(*e.*) The sheriffs and their substitutes shall have all jurisdiction, power, and authority necessary for giving effect to these provisions.

(5.) *Description of offences.*] In any information or complaint under this Act it shall be sufficient to describe the offence in the words of this Act, and no exception, exemption, proviso, excuse, or qualification accompanying the description of the offence in this Act need be specified or negatived.

(6.) *Appeals in England or Ireland.*] In England or Ireland any party may appeal from any order or conviction made by a court of summary jurisdiction on determining any complaint or information under this Act as follows:

(*a.*) The appeal shall be made to some court of general or quarter sessions for the county or place in which the cause of appeal has arisen, holden not less than fifteen days and not more than four months after the decision appealed from:

(*b.*) The appellant shall within seven days after the cause of appeal has arisen give notice to the other party and to the court of summary jurisdiction of his intention to appeal, and of the ground thereof:

(*c.*) The appellant shall immediately after such notice enter into a recognizance before a justice of the peace in the sum of ten pounds, with two sufficient sureties in the sum of ten pounds, conditioned personally to try such appeal, and to abide the judgment of the court thereon, and to pay costs if awarded:

(*d.*) Where the appellant is in custody, the justice may, on the appellant entering into such recognizance as aforesaid, release him from custody:

(*e.*) The court of appeal may adjourn the appeal, and upon the hearing thereof may confirm, reverse, or modify the decision of the court of summary jurisdiction, or remit the matter to such court with the opinion of the court of appeal thereon, or make such other order in the matter as the court thinks fit:

(*f.*) If the matter be remitted to the court of summary jurisdiction such court shall thereupon rehear and decide the information or complaint in accordance with the opinion of the court of appeal.

(7.) *Appeals in Scotland.*] In Scotland any person may appeal from any order or conviction under this Act to the Court of Justiciary, or any circuit court thereof, under or in terms of the Act of the twentieth year of His Majesty King George the Second, chapter forty-three, or under any Act amending that Act or applying or incorporating its provisions with regard to appeals, or to the Court of Justiciary in Edinburgh under or in terms of "The Summary Prosecutions Appeals (Scotland) Act, 1875."

20. *Regulation of proceedings in county courts.*] Proceedings under this Act by and before the judges of the county courts may be regulated in Scotland by any acts of sederunt of the Court of Session, and in Ireland by any orders made by the Lord Chancellor, and until otherwise provided are regulated by such rules and orders and acts of sederunt as may be in force at the commencement of this Act.

The registrar and high bailiffs of the county courts shall be remunerated for the duties to be performed by them under this Act in such manner as the Treasury, with the consent of the Lord Chancellor, from time to time orders and directs.

21. *Public auditors.*] The Treasury may from time to time appoint public auditors for the purposes of this Act, and may determine from time to time the rates of remuneration to be paid by societies for the services of such auditors; but the employment of such auditors is not compulsory on any society.

22. *Fees.*] The Treasury may determine a scale of fees to be paid for matters to be transacted or for the inspection of documents under this Act.

All fees which may be received by any registrar under or by virtue of this Act shall be paid into the receipt of Her Majesty's Exchequer.

23. *Regulations to be made for carrying out the Act.*] The Treasury may from time to time make regulations respecting registry and procedure under this Act, and the forms to be used for such registry, and the duties and functions of the registrar, and the inspection of documents

kept by the registrar under this Act, and generally for carrying this Act into effect.

All such regulations shall be laid before both Houses of Parliament within ten days after the approval thereof if Parliament is then sitting, or if not then sitting, then within ten days from the then next assembling of Parliament.

Until otherwise provided, the forms contained in the fourth schedule to this Act shall be used.

24. *Evidence of documents.*] Every instrument or document, copy or extract of an instrument or document, bearing the seal or stamp of the central office, shall be received in evidence without further proof; and every document purporting to be signed by the chief or any assistant registrar, or any inspector or public auditor under this Act, shall, in the absence of any evidence to the contrary, be received in evidence without proof of the signature.

25. *Duties of the registrars.*] Sub-sections six, seven, eight, and nine of the Friendly Societies Act, section ten, relating to the duties of the chief registrar and assistant registrars, shall, so far as the same are applicable to Industrial and Provident Societies, be deemed to be incorporated with this Act.

26. *Application of Act to Channel Islands.*] With respect to the Channel Islands this Act shall be varied as follows:

(1.) As respects the Island of Jersey, the following provisions shall have effect:

(*a.*) The term "county court" shall mean the court for the recovery of petty debts, in all cases in which the claim or demand shall not exceed the sum of ten pounds sterling, and in all other cases the inferior number of the royal court of the said island, composed of the bailiff and two jurats of the said court:

(*b.*) The term "court of summary jurisdiction" shall have in civil cases the same meaning as the term "county court:"

(*c.*) All misdemeanors under this Act shall be prosecuted, tried, and punished in the form and manner prescribed by the law and custom of the said island with respect to crimes and offences (*crimes et délits*):

(*d.*) All other offences and all penalties under this Act shall be prosecuted and recovered summarily before the magistrate of the court for the repression of minor offences, in all cases of his competency, at the suit or instance of the bailiff of the parish in which the offence or other unlawful act shall have been committed, and in all other cases before the bailiff and two jurats of the royal court, at the suit or instance of Her Majesty's Procurator General for the said island:

(*e.*) All penalties recovered under this Act shall be paid to the officers who by the law and practice of the said island are entitled to

receive fines levied by order of the said courts respectively, and shall by such officers be accounted for and paid to Her Majesty's Receiver General in the said island on behalf of the Crown:

(*f.*) The powers conferred under this Act on two justices shall be exercised by the inferior number of the royal court of the said island:

(*g.*) Clause nineteen of this Act, and the term "Summary Jurisdiction Acts," shall not apply to the said island, but all proceedings under this Act in any of the courts of the said island shall be regulated according to the ordinary practice of such courts respectively, and all penalties shall in default of payment be enforced in the same manner as fines payable to the Crown in the said island:

(*h.*) The rules prescribed by the law of the said island with respect to appeals in civil and criminal cases shall be followed as to appeals from any orders, judgments, or convictions made in cases of summary jurisdiction under this Act:

(*i.*) The terms "the Companies Acts" and "the Companies Act, 1862," shall be taken to mean the law which from time to time is in force in the said island for the formation, regulation, and winding up of companies.

(2.) As respects the bailiwick of the Island of Guernsey:

(*a.*) The court of primary instance within the bailiwick shall have all such powers and authorities as are by this Act conferred either on justices of the peace or on judges of county courts in England: Provided that a sentence may be appealed from if the case admits of an appeal, under the Orders in Council now in force within the bailiwick, but that the decision of the royal court when sitting in a body as a court of appeal shall be final:

(*b.*) When any sum of money becomes payable on the death of a member, such sum of money shall, in default of any direction or nomination such as is contemplated by this Act, be paid to the deceased member's legal representative, according to the law of Guernsey:

(*c.*) All industrial and provident societies within the bailiwick shall be authorised to invest any part of their funds in the state bonds either of Guernsey or of Alderney:

(*d.*) The term "the Companies Act" shall mean the law for the time being in force in the said bailiwick for the regulation and winding up of companies:

(*e.*) All offences and penalties under this Act shall be prosecuted and recovered summarily before the court of primary jurisdiction at the suit or instance of the law officers of the Crown or of a constable of a parish:

(*f.*) All penalties recovered under this Act shall be paid to the Receiver General, to be by him carried to the account of the Crown revenue.

SCHEDULES.

SCHEDULE I.

ACTS AND ENACTMENTS REPEALED.

Date of Act.	Title of Act.	Extent of Repeal.
25 & 26 Vict. c. 87.	An Act to consolidate and amend the Laws relating to Industrial and Provident Societies.	The whole.
30 & 31 Vict. c. 117.	An Act to amend the Industrial and Provident Societies Acts.	The whole.
34 & 35 Vict. c. 80.	An Act to explain and amend the Law relating to Industrial and Provident Societies.	The whole.

SCHEDULE II.

MATTERS TO BE PROVIDED FOR BY THE RULES OF SOCIETIES REGISTERED UNDER THIS ACT.

1. Object name, and place of office of the society.
2. Terms of admission of the members, including any society or company investing funds in the society under the provisions of sub-section (4) or sub-section (5) of section 12.
3. Mode of holding meetings and right of voting, and of making, altering, or rescinding rules.
4. The appointment and removal of a committee of management, by whatever name, of managers or other officers, and their respective powers and remuneration.
5. Determination of the amount of interest, not exceeding two hundred pounds sterling, in the shares of the society which any member other than a registered society may hold.
6. Determination whether the society may contract loans or receive money on deposit subject to the provisions of sub-section (2) of section 10 of this Act, from members or others; and, if so, under what conditions, on what security, and to what limits of amount.
7. Determination whether the shares or any number thereof shall be transferable; and if it be determined that the shares or any number thereof shall be

transferable, provision for the form of transfer and registration of the shares, and for the consent of the committee thereto; and if it be determined that the shares or any of them shall be withdrawable, provision for paying the members the balance due thereon on withdrawing from the society.

8. Provision for the audit of accounts.

9. Determination whether and how members may withdraw from the society, and provision for the claims of executors, administrators, or trustees of the property of bankrupt members, and for the payment of nominees in the case herein mentioned.

10. Mode of application of profits.

11. Provisions for the custody, use, and device of the seal of the society, which shall in all cases bear the registered name of the society.

12. Determination whether, and by what authority, and in what manner, any part of the capital may be invested.

SCHEDULE III.

Form of Statement to be made out by a Society carrying on the Business of Banking.

1. Capital of the society :—
   (*a.*) Amount of each share.
   (*b.*) Number of shares issued.
   (*c.*) Amount paid up on shares.
2. Liabilities of the society on the first day of January (or July) last previous :—
   (*a.*) On judgments.
   (*b.*) On specialty.
   (*c.*) On notes or bills.
   (*d.*) On simple contract.
   (*e.*) On estimated liabilities.
3. Assets of the society on the same date :—
   (*a.*) Government securities (stating them).
   (*b.*) Bills of exchange and promissory notes.
   (*c.*) Cash at the bankers.
   (*d.*) Other securities.

Form of Bond.

(1.)—In England or Ireland.

Know all men by these presents, that we, *A. B.* of , one of the officers of the Society, Limited, established at , in the county of , and *C. D.* of (as surety on behalf of the said *A. B.*) are jointly and severally held and firmly bound to the said society in the sum of to be paid to the said society, or their certain attorney, for which

payment well and truly to be made we jointly and severally bind ourselves, and each of us by himself, our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals. Dated the day of in the year of our Lord .

Whereas the above-bounden *A. B.* has been duly appointed to the office of of the Society, established as aforesaid, and he, together with the above-bounden *C. D.* as his surety, have entered into the above-written bond, subject to the condition hereinafter contained: Now therefore the condition of the above-written bond is such, that if the said *A. B.* do render a just and true account of all moneys received and paid by him on account of the said society, at such times as the rules thereof appoint, and do pay over all the moneys remaining in his hands, and assign and transfer or deliver all property (including books and papers) belonging to the said society in his hands or custody to such person or persons as the said society or the committee thereof appoint, according to the rules of the said society, together with the proper and legal receipts or vouchers for such payments, then the above-written bond shall be void, otherwise shall remain in full force.

Sealed and delivered in the presence of [*two witnesses.*]

(2.)—In Scotland.

I, *A. B.* of hereby bind and oblige myself, to the extent of £ at most, as caution and security for *C. D.*, a person employed by the Society, that he, the said *C. D.*, shall on demand faithfully and truly account for all moneys received and paid to him for behoof of the said society, and also assign and transfer or deliver all property (including books and papers) belonging to the said society in his hands or custody, and that to such person or persons as the said society or the committee thereof appoint, according to the rules of the said society.

Dated at this day of .

Signature of Cautioner.

E. F. of witness.
G. H. of witness.

The above bond shall not require a testing clause or subscription clause, and may be wholly written or wholly printed, or partly written and partly printed.

FORM OF RECEIPT TO BE ENDORSED ON MORTGAGE OR FURTHER CHARGE.

The Society, Limited, hereby acknowledge to have received all moneys intended to be secured by the within [*or* above] written deed.

Signed [*Two members of the Committee.*]

Countersigned [*Signature of Secretary.*]

Secretary.

SCHEDULE IV.

ACKNOWLEDGMENT OF REGISTRY OF SOCIETY.

The Society, Limited, is registered under the Industrial and Provident Societies Act, 1876, this day of .

[*Seal or stamp of central office*, or *signature of Assistant Registrar for Scotland or Ireland.*]

ACKNOWLEDGMENT OF REGISTRY OF AMENDMENT OF RULES.

The foregoing amendment of the rules of the Society, Limited, is registered under the Industrial and Provident Societies Act, 1876, this day of .

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LIST OF RULES

REQUIRED BY A SOCIETY

UNDER THE INDUSTRIAL AND PROVIDENT SOCIETIES ACT, 1876.

PART III.

Digest of Selected Decisions

IN CONNECTION WITH THE

FORMATION AND OPERATIONS

OF

LAND INVESTMENT COMPANIES,

AND

Companies for Local Improvements,

UNDER THE COMPANIES' ACTS, 1862—1880.

DIGEST

OF

SELECTED DECISIONS.

AGENTS.

(*See* DIRECTORS, PROMOTERS, and VENDORS.)

1.—A gratuity given to an agent without the knowledge of his principal vitiates the contract.

The agent is liable to account to his principal for any gratuity which he may so receive, or any profit which he may derive.

The principle adopted in *Hay's Case* (L. R. 10 Ch. App. 593), that all the remuneration which the agent of a purchaser receives secretly from the Vendor is received for the benefit of the purchaser, was acted upon in 1875 by the Court of Appeal in *McKay's Case* (L. R. 2 Ch. Div. 1).

2.—Any surreptitious dealing between one principal to a contract and the agent of the other principal is a fraud in equity, and entitles that principal to have the contract rescinded, and to refuse to proceed with it

in any shape.—*Panama Telegraph Co.* v. *India Rubber Co.*, 1875; L. R. 10 Ch. App. 515; 32 L. T. (N. S.) 328; 23 W. R. 583.

3.—*Payments to an Agent.*—A person, owing money to an agent and knowing him to be an agent, must pay in such a manner as to facilitate the moneys reaching the principal's hands, and cannot pay by a settlement of accounts between himself and the agent.—*Pearson* v. *Scott*, 1878, *Fry*, J.; 38 L. T. (N. S.) 747; *Sweeting* v. *Pearce*, 7 C. B. (N. S.) 484.

4.—*Commission—Corrupt Bargain.*—In the case of a person being employed by both parties to a contract, without such fact being known, it has been *held* that the bargain was corrupt, and that he could not recover his commissions.—*Harrington* v. *Victoria Graving Dock Co.*, 1878; L. R. 3 Q. B. D. 549; 47 L. J., Q. B., 594; 39 L. T. (N. S.) 120.

5.—Where commission was promised to an agent for negotiating a loan on mortgage, which was not carried out in consequence of defect of title, it was *held* by the Court of Appeal, that the agent, having procured a good contract for a loan, was entitled to be paid his commission.—*Fisher* v. *Drewett*, 1878, Ct. of App.; 39 L. T. (N. S.) 253; 48 L. J., Exch., 22. (*Kelly*, C. B., affirmed.)

AGREEMENT.

Between Vendor and Purchaser.

(*See* CONTRACTS, PROMOTERS.)

Where the parties have come to a final agreement relative to the sale of an estate, and one of the terms is that such agreement shall be embodied in a formal contract, the agreement may be enforced even though such formal contract has not been executed.—*Rossiter* v. *Miller*, 1878, H. of Lords; L. R. 3 App. Cas. 1124; 39 L. T. (N. S.) 173. (Judgment of Ct. of App. reversed.)

ARTICLES OF ASSOCIATION.

Alterations in the Articles of Association cannot be prohibited by the Articles.

1.—No company can contract itself out of the power of altering its articles of association, which is given by section 50 of the Companies Act, 1862; and, therefore, a clause in its articles exempting some of them from the operation of that section is of no effect.

2.—A company's power may, however, be restricted by its memorandum of association. By section 50 the alterations are "subject to the provisions of [the] Act,

and to the conditions contained in the memorandum of association."—*Walker* v. *London Tramways Co.*, 1879, *Jessel*, M. R.; L. R. 12 Ch. D. 705.

ATTORNMENT.

See MORTGAGE, TENANCY.

BILLS OF SALE.

See SECURITIES.

BOOKS.

Inspection of—Not of Minute Books by Shareholder—Rights of Shareholders—7 & 8 Vict. c. 110, s. 33.

The Shareholders' right to inspect the books, in which the proceedings of the company are recorded, does not extend to inspection of the Minute Book of the proceedings of the board; the term "Books of the proceedings of the company" meaning only the books recording the proceedings of the general meetings of the company.—*Reg.* v. *Maraquita, &c. Mining Co.*; 32 L. T. 195.

BORROWING OF MONEY.

See PROFITS TO LENDERS.

BUILDING AGREEMENTS.

As to Building Agreements made by Land Societies—Bankruptcy—Trustee disclaiming.

(i.)—"An agreement, which is not a fraud upon creditors, is a protected transaction, and therefore binding as against the Trustee in bankruptcy, who is not allowed to claim part of a contract and disclaim the rest."

This was the view enunciated by *Bacon*, C. J., who reversed an order made in the Lincoln County Court. In so doing he said he followed the previous authorities. On the matter coming before the Court of Appeal, his decision was reversed.

(ii.)—The case arose out of a building agreement. The appellant had entered into a building agreement with the debtor, under which, in the case of his bankruptcy, all materials, &c., then on the land should become forfeited to the lessor.

A liquidation petition having been filed by the debtor in January, 1879, the Trustee, in June, served notice of motion for an order to disclaim this agreement. He asked, however, for a declaration that the bricks and building materials upon the land, at the date of the petition, should go to the creditors under the liquidation. This was granted by the County Court Judge, who held that the proviso of forfeiture in the building agreement was contrary to the policy of the bankruptcy laws, distinguishing the case from the earlier authorities

upon the question; the judgment of the County Court was thus confirmed by the Court of Appeal.—*Re Harrison, Ex parte Meads*, 1879; 41 L. T. (N.S.) 560. Reported, 1880, as *Re Harrison, Ex parte Jay*, 42 L. T. (N. S.) 600.

CALLS.

See WINDING-UP.

CONSOLIDATION OF MORTGAGES.

See MORTGAGES.

CONTRACTS.

(*See* AGREEMENT, INVALID CONTRACTS, SALE.)

Advance of Monies on a Contract—Assignment of Debt.

(i.)—In the operations of land companies it not unfrequently happens that builders get into difficulties, and advances have to be made, even of the whole of the contract price, before the work is completed.

The parties concerned must be on their guard when framing the contracts and acting upon them, lest an assignment by the builder interfere with subsequent variation in the mode of carrying out the contract.

This was illustrated in another class of contracts, where the point involved was *ejusdem generis*.

G. contracted to build a ship for defendant, payment for which was to be by instalments. Afterwards, G. gave a written order to defendants to pay £100 to plaintiff "out of monies due or to become due" from defendant to G. More than £100 of the contract price was then unpaid, and two instalments were not yet due. Afterwards, G., being in difficulties, defendant, to enable him to go on with contract, advanced him the whole contract price before the ship was completed. After the ship was completed plaintiff sued defendant for £100. *Held*, that the order was a valid assignment of a debt or *chose in action*, and, therefore, by the Judicature Act, 1873, sect. 25, sub-sect. 6, plaintiff was entitled to recover.

(ii.)—It will be observed that, in the case quoted, the defendant had had notice of the assignment to the plaintiff; but the question involved was whether the equitable doctrine, affecting a transaction with third parties, was to be held to impede an ordinary business transaction as between the parties to the contract.

There was much force in the view taken by *Brett*, L. J., that business transactions can scarcely be hampered in that way, either on the construction of the Judicature Act, or otherwise, and that the remedy of an equitable assignment of a *chose in action* should be confined to cases where there is nothing to be done but to receive the money.

The doctrine was never intended to prevent the parties to an unfulfilled contract from being able to alter its terms by mutual consent, if such be done *bonâ fide*.

(iii.)—This, indeed, was recognized by *Bramwell*, L. J., although he concurred in the decision. He said:—

"If G. and the defendant had agreed to anticipate the time of payment to defeat the plaintiff such a scheme ought not to succeed; but on the

other hand if G. had broken his engagement, or threatened to break his engagement, to finish the vessel, or to finish it in a reasonable time, and the defendant, to remedy or avert such breach,—reasonably and *bonâ fide*, not to defeat the plaintiff, but to protect himself,—advanced money to G. before it was due, so that it never became due according to the contract, I should have hesitated long before holding that the defendant was liable in this action. But on reading the correspondence I cannot see that this was the case. That the defendant acted *bonâ fide* I doubt not, but I think his advancing of the money as he did was quite voluntary, and in no sense compulsory."

Brice v. ***Bannister***, 1878, Ct. of App. (***Bramwell*** and ***Cotton***, L. JJ.,—***Brett***, L. J., dissenting); L. R. 3 Q. B. Div. 569; 38 L. T. (N. S.) 739. (***Coleridge***, C. J., affirmed.)

COMPANIES' ACTS.

See STATUTES.

COVENANTS.

See EQUITABLE MORTGAGE.

DEBENTURES.

(*See* PROFITS TO LENDERS.)

1.—*Bonds—Irregularity.*

By a deed of settlement power was given to the directors to borrow money for the company by issuing

debentures in a specified form, and with the consent of shareholders in the manner prescribed. The directors afterwards borrowed money, but not with the formalities so required, and the money borrowed was applied to the purposes of the company, stated in the annual reports, and not objected to by the shareholders. It was held that after two years of such acquiescence, the debentures so issued were valid.—*Re Magdalena Steam Navigation Co.*, 1860, *Wood*, V.-C.; 3 L. T. (N. S.) 147; 6 Jur. (N. S.) 975, Ch.

2.—*Bond—Equities—Obligor and Obligee—Recognition of Assignee.*

If a company accept notice of the assignment of a bond which it has issued, it is precluded from setting up against the assignee equities, between them and the original obligor, attaching to the instrument itself.—*In re Hercules Insurance Company, Brunton's case*, 1874, *Malins*, V.-C.; L. R. 19 Eq. 302; 44 L. J., Ch., 450; 31 L. T. (N. S.) 747; 23 W. R. 286.

3.—*Debentures—Secured—Preference.*

With respect to debentures held by shareholders *Malins*, V.-C., decided that debentures given by a company, by which it "mortgaged and charged all the property, book debts, credits, assets, monies, and other effects" of the company, were entitled to preference over the unsecured creditors. It was objected that the debentures were really documents representing an

advance of capital by the shareholders to the concern, the debentures in question being subscribed for by shareholders with hardly an exception; but the Vice-Chancellor held that where there was full authority to issue the debentures, the unsecured creditors had sufficient notice. The intention of the Companies Act, he remarked, was to exempt shareholders from all the incidents of partnership, except to the amount of the capital subscribed, and the exemption would not be complete if they were not, *qua* individuals, in the same position as strangers in lending to the corporation. There is nothing improper, therefore, in such individuals taking security for their advances, just as any stranger might do, and the unsecured creditors have no cause to complain unless the act gave them insufficient facilities for knowing what was being done.—*In re General South American Co.*, 1876, Ct. of App.; L. R. 2 Ch. Div. 337; 34 L. T. (N. S.) 706; 24 W. R. 891. (*Malins*, V.-C., affirmed.)

4.—*Mortgage Debenture—Chose in Action—Equitable Mortgage—Bankruptcy—Notice—Order and Disposition.*

A debtor handed a mortgage debenture of a mining company, endorsed in blank, to his creditor, as security for his debt. Eight days afterwards the debtor committed an act of bankruptcy, upon which he was adjudicated bankrupt. After the act of bankruptcy, the creditor gave notice to the company that he held the debenture. The trustee having claimed the debenture as having been in the order and disposition of the bankrupt at the commencement of his bankruptcy,

Held, that the debenture was a *chose in action*, and

wsa within the exception of sect. 15, sub-sect. 5, of the Bankruptcy Act, 1869, and that a valid transfer of it had been effected.—*Re Pryce, Ex parte Rensburg*, 1877, *Bacon*, C. J.; L. R. 4 Ch. D. 685; 36 L. T. (N. S.) 117.

5.—*Debentures taken by Directors for money lent are valid—Omission to Register.*

A deed was executed in favour of trustees, charging all the property of the company in favour of the holders of debentures issued thereunder. The trustees were not directors of the company; but certain directors held debentures.

Held, that the debentures created no charge on the company's assets, but derived force simply from the mortgage deed; that there was nothing to show that the directors "knowingly and wilfully authorized or permitted" the omission to register; and that there was nothing in the Act and nothing in the general principles of equity to deprive these directors of their charge. It is the function of equity to relieve from penalties and not to inflict others in addition to those imposed by an Act of Parliament.—*Re Globe, etc., Co.*, 1879, *Jessel*, M. R.; 40 L. T. (N. S.) 380; 48 L. J., Ch., 295; 27 W. R. 424; W. N., 1879, p. 18.

In this case, *Jessel*, M. R., when delivering a long and elaborate judgment, took occasion to animadvert strongly on the series of previous decisions, where Directors (situated nearly as in the present case) had been held

not to be entitled to stand as Creditors as against the general creditors. One of the points considered by the Master of the Rolls was that, (although the Debenture stated a loan and a promise to pay, and that the loan was part of a sum secured by the mortgage to trustees) the debenture did not itself create the charge, and that it was not the duty of the directors who received the debenture to register.

6.—*Winding-up order—Debenture-holder—Refusal.*

(*See* SHARE-BONUSES.)

(i.)—Bonds, with coupons attached, were issued by a limited company, so framed that each bondholder should be entitled to a "bonus-share" under a trust-deed, by which the company bound itself to pay to the trustees interest on the bond, and an annual sum as sinking fund to provide for the repayment of the bonds. Each bond contained a covenant by the company with the trustees to pay the bearer thereof £100, and to pay interest to the holder of the coupon.

(ii.)—*Held*, 1st.—that a Bondholder was not entitled to a winding-up order in respect of unpaid interest,—on the ground that, as he had no right of action except through the Trustees, he was not a creditor of the company, either in respect of the bond as to principal, or of the coupon as to interest; 2nd.—that, even if he were a Creditor, inasmuch as a large majority of the bondholders opposed the petition, and he would be in no better a position by obtaining his order, the court had a discretion, under section 91 of the Act of 1862, which in this case was properly exercised by a refusal of the winding-up order.

Re Uruguay, etc., Railway Co., 1879, *Jessel*, M. R.;

L. R. 11 Ch. D. 372; 41 L. T. (N. S.) 267; 48 L. J., Ch., 540.

DEBT.

When a debt is not a General specialty debt—Acknowledgment under Seal—Implied Covenant for Repayment.

Although a debt be acknowledged under seal and a security given, yet, if there is no covenant for repayment, the acknowledgment does not necessarily create a general specialty debt.—*Jackson* v. *North Eastern Railway Co.*, 1877, *Malins*, V.-C.; L. R. 7 Ch. D. 573; 37 L. T. (N. S.) 664.

DIRECTORS.

(*See* INVALID CONTRACTS; also, EXPENSES, and PROMOTERS' CONTRACTS.)

1.—*Liability for Misapplication or Misappropriation of Monies of a Company.*

If the directors exceed their powers, and appropriate the funds of the company in a way not authorized by the articles of association or the deed of settlement, they are bound to make good out of their own pockets the

full amount of money misappropriated.—*Grimes* v. *Harrison*, 1859, *Romilly*, M. R.; 28 L. J., Ch., 827; 33 L. T. 115, Ch.; 26 Beav. 435; 5 Jur. (N. S.) 528. (See *Simpson* v. *Westminster Palace Hotel Co.*, 8 H. L. Cas. 712. *In re Troup*, 29 Bac. 353; and 30 *id.* 225, as to borrowing money.)

2.—*Directors* de facto—*Power as to Cheques.*

The nature of the authority of the officers and directors of a joint stock company to sign cheques, so as to discharge the bank paying them, was reviewed and decided upon by the House of Lords in July, 1875.

A bank had paid cheques in pursuance of a letter received by the manager of the bank, signed by A., as secretary of the company, enclosing what purported to be a copy of a resolution requesting the bank to pay all cheques signed by W., and one of two other directors mentioned, and countersigned by the secretary. One of these persons, however, subsequently stated that he did not know that he had ever been appointed a director; and on the company being wound up, it was ascertained that W. and the other directors and secretary were self-elected, never having been appointed in pursuance of the articles of association. The liquidator accordingly sued the bank for the return of the money which they had paid; but the finding in the highest Court is that the bank was justified, under the circumstances, in honouring the cheques which were drawn by persons who were, at all events, *de facto* directors of the com-

pany.—*Re The Irish National Bank, Mahony* v. *East Holyford Mining Co.*, 1875; L. R. 7 H. L. Cas. 869; 33 L. T. (N. S.) 383.

3.—*Directors' duties towards Creditors.*

(i.)—Directors are trustees for the shareholders, and if they exercise their powers in breach of trust for their own benefit, they are liable, like all other trustees, to make good to their *cestuis que trust* the consequences of their breach of trust.

(ii.)—But directors are trustees for the company and its members, and not for the creditors of the company. The creditors have certain rights against the company and its members, but they have no higher or special right against a director than against any other member of the company. They have only those statutory rights against members of the company, which are given to them, by the Act, after the winding-up.

(iii.)—There is nothing to prevent directors from paying a debt of the company, for which they are themselves liable, in priority to other debts, provided that the payment does not amount to a fraudulent preference, under sect. 164 of the Act of 1862. The payment would not be a breach of trust or of duty towards the only persons for whom the directors are trustees.—*Re Wincham, etc., Co., Poole, Jackson, and Whyte's Case*, 1878, Ct. of App.; 38 L. T. (N. S.) 413, 659; 26 W. R.

588, 823; W. N., 1878, pp. 102, 139. (*Bacon*, V.-C., reversed.)

4.—*Consideration for Paid-up Shares.*

An agreement was entered into between a company and one of the directors that, in consideration of his giving up certain benefits under a former agreement, he should be credited in the books of the company with a sum equal to three-fourths of the amount paid up by him on his shares. The money was duly credited in pursuance of the agreement.

Held, that the sum so credited amounted to a cash payment by the director within the meaning of the 25th section of the Companies Act, 1867; and that there was nothing fraudulent or improper in such an agreement being entered into. The costs of the liquidator and the director were ordered to be paid out of the estate.—*Re Regent United Service Stores, Ex parte Bentley*, 1879, *Fry*, J.; L. R. 12 Ch. D. 850; 41 L. T. (N. S.) 500; 28 W. R. 165.

DIRECTORS' KNOWLEDGE.

1.—*Director's Position afterwards in respect to alleged Fraudulent Transactions known to him before taking Office—Companies Act*, 1862, *s.* 165.

A director of a company who has knowledge of a fraud, breach of trust, or misfeasance, committed before he was a director of, or connected with, the company, by which the company's money was lost, is not liable

under section 165 of the Companies Act, 1862, or otherwise, for not communicating such knowledge to the company, or for not instituting proceedings for the recovery of the money lost.—*Re Forest of Dean Coal Mining Co.*, 1878, *Jessel*, M. R.; L. R. 10 Ch. D. 450; 40 L. T. (N. S.) 287; 27 W. R. 594.

2.—*Knowledge of Entries in the Books of the Company.*

(i.)— . . . Attendance at directors' meetings is not sufficient to make a person (who had so attended, but had never applied for shares) a contributory, in respect of shares which had been allotted to him and been entered, without his knowledge, in his name on the register, although no notice of the allotment had been sent to him. The result of the more recent decisions (per *Bacon*, V.-C., in *Hallmark's Case*) is that:—

"If you impute to a man a contract to take shares, you must make out something like a contract. There was no evidence here of any contract to take shares. Being advertised as a director,—acting as a director,—and attending directors' meetings, are not enough to fix him with a knowledge of the allotment of the shares, in the face of an affidavit that he did not know anything of the contents of the minute book or the register, and that he had never intended to take shares, and that he became a director on that express understanding." (*See* QUALIFICATION.)

(ii.)—The old doctrine (*Ex parte Brown*, 19 Beav. 97) that, where a person is a director, he will be taken to know what appears in the books of the company, is not now recognized.

In *Hallmark's Case*, 1878, *Jessel*, M. R., said:—

"The contention on the part of the liquidation is that, because H. was a director, he must be taken to have known all the contents of every

book of the company. There is no rule of law requiring that such knowledge shall be imputed to a director. As a matter of fact, a director of a great company could not be expected to know the contents of all the company's books, and, if such knowledge were to be imputed to him, the imputation would be of knowledge which did not exist in fact, and it would involve an extension of the doctrine of constructive notice and imputed knowledge far beyond what has been decided."

Re Wincham, etc., Co., Hallmark's Case, 1878, Ct. of App.; 38 L. T. (N. S.) 413, 660; 26 W. R. 589, 824; W. N., 1878, pp. 103, 139. (*Bacon*, V.-C., affirmed.)

DIRECTORS' LIABILITIES.

See EXPENSES OF COMPANY.

DIRECTORS, PRESENTS TO.

(*See* SHARES.)

1.—A director who has received a present of a part of the purchase money, and being knowingly in the position of agent and trustee for the purchasers, cannot retain that present as against the actual purchasers.

Whether such a purchase is or is not an advantageous one for the company, whether the property is or is not worth the increased price paid for it by the company, is wholly immaterial.

A director, in such a case, will be deemed to have obtained the present under circumstances, which made him

liable at the option of the *cestuis que trust* to account either for the value at the time he received the present, or to account for the thing itself and its proceeds if it has increased in value.

2.—*Receiving Presents of Paid-up Shares—Misfeasance—Liability to pay Value—Companies Act*, 1862, *s.* 165.

(*See* QUALIFICATION.)

A summons by the liquidator of a company, under section 165 of the Companies Act, 1862, called upon M., a former director, to contribute to the assets of the company the value of a number of fully paid-up shares, which had been given to him by the vendor of the property to the company. With respect to some of these shares, it had been stipulated that the company should retain the certificates for two years. Some of the shares given to M. remained standing in his name at the commencement of the winding-up; others had been transferred by him for value, and others had been transferred for a nominal consideration.

There was evidence that the public had been giving the full nominal value for the shares of the company.

Held, that the same principle applied to those shares, the certificates of which were to be retained for two years, as applied to the others; that M. had been guilty of misfeasance in relation to the company; and that he must pay the full nominal value of all the shares which had been given to him.—*Re Diamond Fuel Co., Mitcalfe's Case*, 1879, Ct. of App. (*Jessel*, M. R., *Baggallay* and

Thesiger, L. JJ.); L. R. 13 Ch. Div. 169; 41 L. T. (N. S.) 717; 28 W. R. 417. (*Fry*, J., affirmed.)

DIRECTORS' QUALIFICATION.

See QUALIFICATION.

DIVIDENDS GUARANTEED.

Guarantee Fund created to secure payment of Dividends.

1.—Where a fund was to be provided out of the purchase money, and paid to the directors in order to guarantee dividends, it was *held* to be the property of the company, and not of the shareholders individually, and that it should be paid to the liquidator of the company, *Bacon*, V.-C., observing that it was the duty of the company to pay its debts before dividing profits.—*Re Stuart's Trusts*, 1876; L. R. 4 Ch. D. 213; 46 L. J., Ch., 86; 25 W. R. 295.

2.—In the next case, under somewhat different arrangements with the vendor, a different decision was arrived at by the Court of Appeal.

By an agreement for the sale of a colliery to a trustee for a company in course of formation, the vendor ageeed to pay to the company during two years from the date of its incorporation, such a sum as, together with the net profits of the company, should be equal to interest at five per cent. per annum on the paid up capital of the company. This agreement was stated and adopted in the articles of association of the company. One of the articles provided that no dividend should be payable except out of the profits arising from the business of the company.

Each half-year the vendor had to make a payment under this agreement to the directors for distribution among the shareholders, the profits not amounting to five per cent. After the expiration of the second year, but before the deficiency of dividend for the fourth half-year had been paid, the company went into voluntary liquidation, and the vendor afterwards paid to the individual shareholders the amount necessary to make their fourth half-year's dividend equal to five per cent.

Held, that the agreement created a Trust for the individual shareholders; and that the Liquidator could not claim the amount so paid by the vendor as part of the assets of the company.

In this case, *James*, L. J., observed that he was "unable to see anything on the face of the agreement that can be considered as a fraudulent device."

So, also, per *Cotton*, L. J.:—

"The real question on the contract was whether the payment of dividend was to be made by the seller to the company as part of their property, or whether it was to be made to the company as a trust fund appropriated to certain persons, and not as part of the company's property available for payment of their creditors . . . .

"It was a sum appropriated to the shareholders, and was not to form part of the profits and certainly not part of the capital of the company. Therefore the liquidator had no right to say that it ought to have been paid to the company.

. . . . . "It is true that in *Re Stuart's Trusts* (see *supra*) the sum payable was held to be part of the profits; but in that case it was expressly stipulated that the payment under the guarantee should be applied as a dividend. So that the question was avoided by the special form of the contract. Could the money in this case have been applied by the company as part of the general assets? No one could arrive at such a conclusion."

Re South Llanharran Colliery Co., Ex parte Jegon, 1879, Ct. of App. (*James*, *Brett*, and *Cotton*, L. JJ.); L. R. 12 Ch. Div. 503; 41 L. T. (N. S.) 567. (*Hall*, V.-C., reversed.)

3.—A similar decision was given in the following case:—

The agreement for the sale of mining property to a trustee for a company in course of formation provided that the sum of £15,000 should be paid in cash by the vendors to two trustees, who should hold the same in trust to secure the payment of, and, if necessary, thereout to pay a minimum dividend of ten per cent. per annum on the preferred shares of the company for a term of three years, payable quarterly, and subject thereto for the vendors. The guarantee was announced in a prospectus, and the agreement confirmed by the articles of association of a company which was registered shortly afterwards.

The trustees paid the sums necessary to make up the guaranteed dividend for every quarter during the three years, except the last, to the directors who distributed them to the shareholders. The trustees had also paid some surplus monies to the vendors, retaining sufficient to meet the accruing dividends. Shortly after the last quarter's payment became due the company was ordered to be wound up, and the official liquidators claimed the fund then remaining in the hands of the trustees.

Held, that the agreement created a trust for the individual shareholders; that the fund had never belonged to the company, and was not liable for its debts.—*Re Gelly Deg Colliery Co.*, 1878, Ch. D., *Malins*, V.-C.; 38 L. T. (N. S.) 440; W. N., 1878, p. 101.

DIVIDENDS—INTEREST.

Dividends paid under the Name of Interest at 5 per cent., but not out of Profits—Liability of Directors to make good the Capital spent in error.

1.—The articles of association of a limited company provided that the directors might, without the sanction of a general meeting, pay interest at the rate of 5 per

cent. per annum upon the paid-up capital. The directors, acting on this power, paid interest from time to time to the shareholders. No profits, however, had ever been made, and the company being ordered to be wound up:—

Held, that the directors had, in making payments to shareholders out of capital, acted *ultra vires* and committed a breach of trust, and that they were, therefore, liable jointly and severally to make good the amount of such payment, but without prejudice to their right to recover from each shareholder the amount of capital he had received.

Per *Jessel*, M. R.:—

"I cannot find, from the beginning to the end of the articles [of the company], anything like a power to return capital. The only section or clause which was at all relied upon was the 122nd, which says that 'the directors may, *without* the sanction of a general meeting, pay interest at the rate of 5 per cent. per annum upon the paid-up capital of the company.'

"Then the 128rd article says that no dividend shall be payable except out of profits; and dividends can only be paid with the sanction of a general meeting. It does not appear to me that the 122nd article, rightly considered, authorizes the payment of interest out of capital, but only out of income."

Re National Funds Assurance Co., 1878, *Jessel*, M. R.; L. R. 10 Ch. D. 118; 39 L. T. (N. S.) 420; 27 W. R. 302; 48 L. J., Ch., 163.

2.—A similar decision (not reported) was given by *Hall*, V.-C., in 1879, in the case of *Re British Imperial Insurance Corporation*, to the effect:—

(i.)—That the directors were liable to make good to the liquidator of the British Imperial Insurance Corporation

various sums of money, which from 1867 to 1875 had been paid under the name of interest at 5 per cent. on the shares; there having been no profits to justify such payments, which had therefore been *de facto* paid out of capital.

(ii.)—That each director's liability should be in respect to the particular payments during his tenure of office.

(iii.)—That the order on the directors was not to interfere with their right of proportionate recovery, from each shareholder, of the interest so paid.

3.—In the first case it was the liquidator who took out the summons in the winding-up, and the respondents contended that a creditor alone could make the application.

Respecting this *Jessel*, M. R., observed:—

"I read the section [of the Companies Act] literally, that is, as I understand it, the liquidator, or a creditor, or a contributory, may apply. It is for the court to put the section in force, if it thinks proper; and, if it is proper, to put it in force.

"I take it that the order may be made on the application of any one of those persons. It does not appear to me to be necessary to inquire what the position of a liquidator, suing third persons or suing shareholders, may be. All I have to do is to obey the Act of Parliament, which is clear, plain, and unambiguous in its terms. . . .

"But to avoid any possibility of question, not because I entertain any doubt about it, but out of respect to some of the *dicta* (which may, possibly, be understood in the sense in which they have been urged upon me), I will allow the summons to be amended by adding a creditor."

4.—These decisions are in accordance with the general principle that the creditors of a company have a distinct right to have the "paid-up capital" kept for payment of their debts. It is on this understanding that a com-

pany trades, and if the capital be (under any disguise) paid to the shareholders it is, in such a case, "misapplied." The payments would amount to a breach of trust, and be subject to the words of the section. The question of the directors not intending any wrong would not afford them any excuse.

It is to be observed that, in the articles of both the companies concerned, a clause existed which authorized the payment of *interest*. The idea of the framers of the articles apparently being that, if the paid-up capital were invested at interest, interest might be paid to the shareholders.

The two points, however, overlooked were:—Firstly, that full 5 per cent. interest per annum might not be earned by the investment of the capital, especially if a portion of the capital were used in the necessary expenses of starting the company; and secondly, that even if 5 per cent. interest were earned, yet the general business itself might be resulting in a loss, in which case the capital and its produce would be subject to the creditors' claims.

One important point arises from these decisions, viz., that the practice of attaching—in advance to share warrants to bearer (authorized by the Companies Act, 1867)—coupons for the half-yearly interest dividends at 5 per cent. must be abandoned, unless directors are prepared to incur the liability to make good the amount so paid, with but a remote contingency of getting any portion back from the share warrant holder.

ERROR.

1.—*Error in Lease as compared with counterpart.*

In a comparatively recent case, referring to an error that occurred nearly a century ago, by which a lease differed from its counterpart, the term being stated as 94 years in the one and 91 in the other, the majority of the Court differed from the opinion of *Kelly*, C. B., and *held* that there was, on the facts, sufficient ground for rectifying the error by making the lease to accord with the counterpart.—*Burchell* v. *Clark*, 1876, Ct. of App. (*Cockburn*, C. J., *Bramwell* and *Amphlett*, JJ. A.,—*Kelly*, C. B., dissenting); L. R. 2 C. P. Div. 88; 35 L. T. (N. S.) 690; 46 L. J., C. P., 115. (Judgment of Common Pleas Division reversed.)

2.—*Misdescription—Absence of Wilful Misrepresentation —Compensation, after conveyance, ordered.*

There is no rule in equity, which debars a purchaser from obtaining compensation from his vendor for a misdescription of the estate sold, merely on the ground of his having accepted a conveyance. *Manson* v. *Thacker* (L. R. 7 Ch. D. 620) questioned.—*Re Turner and Skelton*, 1879, *Jessel*, M. R.; L. R. 13 Ch. D. 130; 41 L. T. (N. S.) 668; 49 L. J., Ch., 114.

3.—*Misdescription in particulars of sale—Under-lease described as lease—Compensation—Conditions of sale.*

At a sale by auction, the premises were described in the particulars of sale as held on lease, whereas the

premises were in fact held by the vendors under an under-lease, and it so appeared from the conditions of sale. In an action to enforce specific performance of the contract of sale,

Held, that the under lease being described as a lease was not such a misdescription as would prevent the court from decreeing specific performance of the contract. *Madeley* v. *Booth* (2 De G. & Sm. 718) commented upon.—*The Camberwell, etc., Building Soc.* v. *Holloway*, 1879, *Jessel*, M. R.; L. R. 13 Ch. D. 754; 41 L. T. (N. S.) 752; 49 L. J., Ch., 361.

4.—*Mistake in Lease as to number of years—Principle of* caveat emptor.

A. agreed to take an under-lease from B. for the residue of the term which B. held. By mistake of B.'s solicitor the under-lease purported to grant a term seven years longer than B. held. The under-lease contained the usual qualified covenant for quiet enjoyment. A. entered into possession and held it till nearly the end of B.'s real term. Then B.'s executors, finding out the mistake, wrote to A. that they would be obliged to require him to give up possession at the end of the term which B. really held. A. procured a fresh lease from the ground landlord at an increased rent, and claimed the amount of such increased rent for the seven years, as damages for misrepresentation and breach of the covenant for quiet enjoyment.

Held, that it was the duty of A. to look at the original lease, and, not having done so, he could not recover damages for the common mistake, and that there had been no breach of covenant, and that *caveat emptor* applied.—*Besley* v. *Besley*, 1878, *Malins*, V.-C.; L. R. 9 Ch. D. 103; 38 L. T. (N. S.) 844; 27 W. R. 184.

EQUITABLE MORTGAGE.

Equitable Mortgage—Foreclosure—Bankruptcy Act, 1869, *Sections* 12 *and* 78; *Rules of* 1870, **Nos.** 78, 79, 80.

1.—The trustee in bankruptcy of an *equitable mortgagee* by deposit may bring an action in the Chancery Division for foreclosure against the trustee in bankruptcy of the mortgagor, and is not obliged to make his application to the Court of Bankruptcy to have the property sold.—*Waddell* v. *Toleman*, 1878, *Fry*, J.; L. R. 9 Ch. D. 212; 38 L. T. (N. S.) 910; 26 W. R. 802.

2.—An *equitable mortgage* was lately held not to be a breach of covenants in a lease against mortgaging, or assigning, or otherwise parting with the "indenture of lease or the premises thereby demised or any part thereof."

(i.)—The lessee made an equitable deposit of the lease, with a memorandum to the effect that the depositee should hold the lease "by way of equitable mortgage" as security for a sum of money due to him by the lessee, and should have a lien on the lease to the extent of £2,000.

Held, that this equitable deposit was not a breach of the covenant by the lessee not to "mortgage, sell, assign, or otherwise part with" the lease or premises, inasmuch as an equitable deposit could not be placed higher than a specific agreement to execute a mortgage, and therefore could not be regarded as a breach of a covenant not to mortgage, any more than an agreement by a lessee to assign would be a breach of a covenant against assigning; and also that the intention of the lease was to prohibit the imposing of a new tenant, or a change in the possession of the demised premises, which result was not produced by the equitable deposit.

(ii.)—The point in the above case was connected with the expression "equitable mortgage." By *Doe d. Pitt* v. *Hogg* (4 D. & R. 226) a

deposit of a lease as a security for money advanced is not deemed a breach of a covenant not to assign, transfer, set over, or otherwise part with the demised premises, or the indenture of lease by which they were demised.

M'Kay v. *M'Nally*, 1879, Ct. of App. Ir. (*Ball*, L. C., *Palles*, C. B., and *Deasy*, L. J.); 4 L. R. Ir. 438; 41 L. T. (N. S.) 230.

EQUITY OF REDEMPTION.

Purchase of Equity of Redemption by First Mortgagee—Intention to keep First Charge alive for Benefit of Purchaser—Effect of, on Right of Second Mortgagee.

It has been held that where the intention is apparent upon the deed, carrying out the above, not to let in the second mortgagee as first mortgagee, such second mortgagee could only foreclose on terms of paying off the amount secured by the first mortgage.

The rule in *Toulmin* v. *Steere* (3 Mer. 210) is one not to be extended; and it is doubtful whether that decision is binding on the Court of Appeal.

Adams v. *Angell*, 1877, Ct. of App. (*Jessel*, M. R., *James* and *Baggallay*, L. JJ.); L. R. 5 Ch. Div. 634; 36 L. T. (N. S.) 334; 46 L. J., Ch., 54. (*Hall*, V.-C., affirmed.)

ESTOPPEL.

Mortgage—Grant without Recitals—Covenants for Title.

A. by deed without recitals purported to grant certain freehold property to the plaintiffs by way of mortgage. The deed contained the usual mortgagor's covenants for title, including a covenant that the mortgagor

"had power to grant the premises in manner aforesaid." Two forged deeds showing a title in A. were produced and handed by A. to the plaintiffs; but at the date of the mortgage he had not the legal estate or any interest in the property. Subsequently, A. acquired the legal estate, and immediately afterwards mortgaged the property to the defendants.

Held, that inasmuch as the mortgage to the plaintiffs contained no precise averment that A. was seised of the legal estate, no estoppel had been created in favour of the plaintiffs as against the defendants, and that the defendants' mortgage was entitled to priority.—*General Finance, etc., Co.* v. *Liberator Building Soc.*, 1878, *Jessel*, M. R.; L. R. 10 Ch. D. 15; 39 L. T. (N. S.) 600; 27 W. R. 210.

EVIDENCE.

Parol Evidence—When admissible in connection with an Instrument.

Parol evidence of the intention of the parties, though inadmissible to *raise*, is admissible to *rebut*, the presumption of the satisfaction by one instrument of an obligation created by another instrument.

This was the decision in reference to the effect of a will on an unsatisfied covenant in a settlement.—*Tussaud* v. *Tussaud*, 1878, Ct. of App. (*James*, *Brett*, and *Cotton*, L. JJ.); L. R. 9 Ch. Div. 363; 39 L. T. (N. S.) 113; 26 W. R. 874. (*Jessel*, M. R., reversed.)

EXPENSES OF COMPANY.

(*See* PROMOTERS.)

Misfeasance of Director—Improper Payment—Personal Liability.

A director of a company was present and voted at a meeting where a payment was made for preliminary expenses. He made no inquiry as to what the payment was for. It was, in fact, for expenses incurred in fraudulently raising the prices of the company's shares in the market. The payment was included in an item which appeared in the annual balance-sheets, and passed unquestioned. The company's articles of association contained a provision empowering the directors "to pay all costs and expenses whatsoever of and incident to the promotion, formation, establishment, and registration of the company."

Held, that the director was liable, under section 165 of the Companies Act, 1862, to repay the amount so paid to the official liquidator in the winding-up. That there had been no ratification by the company of the payment, there being no notice such as to attract the attention of persons of ordinary care, or to put them upon inquiry.

Though a director's liability is not governed by the strict rules applied in the case of trustees, he must show reasonable diligence. A director would not be liable for an improper payment sanctioned by him *bonâ fide* on the report of a finance committee that it was proper.—*Re Railway, etc., Co., Marzetti's Case*, 1880, Ct. of App. (*James, Brett*, and *Cotton*, L. JJ.); 42 L. T. (N. S.) 206; W. N., 1880, p. 50; 28 W. R. 541. (*Jessel*, M. R., affirmed.)

FALSE REPORTS.

(*See* REPORTS.)

False Reports—Liability of Directors and Officials.

In *Cullen* v. *Thompson* (6 L. T. 870; 4 Macq. H. L. Cas. 441), which was decided by the House of Lords in 1862, the directors of a joint-stock company issued false and fraudulent reports—the statements for such reports having been supplied by the secretary and other officers, who knew that they were false, and were to be used for the purpose of deceiving the public. The plaintiff acting upon such reports bought shares in the company, and thereby suffered loss. The House of Lords held that each of the officers of the company, who knowingly assisted in the fraud, was personally liable for the loss caused to the plaintiff by the misrepresentations in the report, although the report was signed by the directors only, and not by the subordinate officers.

These officials were, however, civilly responsible for the consequence of having joined with and assisted their masters in the commission of fraud. It was immaterial that their concurrence was unknown to the party injured.

This proceeded from the general rule, that all persons directly concerned in the commission of a fraud are to be treated as principals. No person will be allowed to excuse himself on the ground that he acted as the agent or as the servant of another; for the contract of agency

or of service cannot impose any obligation on the agent or servant to commit or assist in commiting a fraud. (Per *Westbury*, L. C.)

FIRE INSURANCE.

See POLICY.

INCUMBRANCES.

Annuity charged on Land—Annuity Act—Registry Acts—Notice to Purchaser.

An annuity charged on land, but not registered under the 18 & 19 Vict. c. 15, was held, by *Jessel*, M. R., to be invalid as against subsequent incumbrances taken with express notice of the annuity, and even as against the trustee in bankruptcy of the grantor.

The Court of Appeal, however, took quite a different view, and *held* that a purchaser or mortgagee,—who has notice of any prior incumbrance, annuity, or contract whatsoever,—cannot shelter himself under section 12 of the Annuity Act, any more than he can under the County Registry Acts, and that the trustee in bankruptcy cannot be in a better position than the grantor of the annuity.—*Greaves* v. *Tofield*, 1880, W. N., 1880, pp. 14, 81; 28 W. R. 840.

The difference of the views taken by *Jessel*, M. R., on one point, as compared with those of *James*, *Baggallay*,

and *Bramwell*, L. JJ., is traceable in part to the word "creditors" in the Annuity Act; an expression which the Court of Appeal regarded as not inclusive of a trustee in bankruptcy, but rather of such creditors as have some special right or remedy against the land, as, for example, execution creditors.

INFANTS.

See MINORS.

INTEREST.

See PROSPECTIVE PAYMENTS; also DIVIDENDS.

INTERROGATORIES.

1.—*Interrogating a Member.*

(i.)—It is unnecessary to make a member of a company a party to an action for the purpose of interrogating him; and, if so joined, he will be struck out.—*Wilson* v. *Church*, 1878, *Jessel*, M. R.; L. R. 9 Ch. D. 552.

(ii.)—Per *Jessel*, M. R.:—

"It is for the Court to decide which member [of a company] is to be interrogated; and [if reasons are shown] why one member can give the information and not another, or why one member can give information

on one set of questions, and another member on another set of questions, the Court can direct which member or members shall be examined to give information." (*Ibid.* L. R. 9 Ch. D. 557.)

2.—*A Vendor and Director liable to be interrogated.*

Upon an affidavit stating that T. was a vendor to, and until recently a director of, the defendant company, and that he is still a member, and well acquainted with all its affairs, leave was granted to the plaintiff to serve T. with interrogatories.—*Berkeley* v. *Standard Discount Co.*, 1879, Ct. of App. (*Jessel*, M. R., *Baggallay* and *Thesiger*, L. JJ.); L. R. 13 Ch. Div. 97; 41 L. T. (N. S.) 374; 49 L. J., Ch., 1. (*Fry*, J., reversed.)

3.—*Costs of the Members.*

(i.)—A member of a company, to whom interrogatories have been delivered under the Rules of Court, 1875, Order XXXI, r. 4, is not entitled to his taxed costs of answering those interrogatories before delivering his answers; nor will the Court make any order as to the payment of his costs separately from the costs of the company.

(ii.)—Per *Jessel*, M. R.:—

"The ordinary practice is for the company's solicitor to act for the officer or member who is directed to answer . . . . and to charge the costs against the company."

Berkeley v. *Standard Discount Co.*, see *supra*.

4.—*As between First and Second Mortgagees.*

In an action for redemption by a second mortgagee against a first mortgagee, the defendants answered that part of an interrogatory, in which they were asked to set forth the amount due for principal, interest, and costs, but declined to answer further. The interrogatories asked, in

addition, whether the defendants held any and what securities for their debt other than the security upon which the plaintiffs' debt was charged. The plaintiffs excepted to the defendants' answer.

Held, that the defendants must set forth what security they possessed for the debt.

West of England, etc., Bank v. *Nickolls*, 1877, *Malins*, V.-C.; L. R. 6 Ch. D. 613.

5.—*Costs in connection with unreasonable, vexatious, or too lengthy interrogatories.*

Rule 2 of Order XXXI of the Rules of Court of 1875 provides that:—

"The Court in adjusting the costs of the action shall, at the instance of any party, inquire or cause inquiry to be made into the propriety of exhibiting such interrogatories, and if it is the opinion of the taxing master or of the Court or Judge that such interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the costs occasioned by the said interrogatories, and the answers thereto, shall be borne by the party in default."

6.—*Interrogatories may be delivered to Members and Officers of Societies and Companies.*

This is provided by rule 4 of Order XXXI of the Rules of Court of 1875, as follows:—

"If any party to an action be a body corporate or a joint stock company, whether incorporated or not, or any other body of persons, empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party may apply at Chambers for an order allowing him to deliver Interrogatories to any member or officer of such corporation, company, or body, and an order may be made accordingly."

INVALID CONTRACTS.

(*See* MEMORANDUM OF ASSOCIATION.)

Contracts outside the scope of business for which a company is formed—even where they receive the unanimous confirmation of all the shareholders—are invalid. This was decided in the case of *Ashbury Railway Carriage Co.* v. *Riche*, 1875; L. R. 7 H. L. Cas. 653.

The directors of a Railway Carriage Company had entered into an agreement to buy the concession of a projected railway in Belgium, and to finance the undertaking. This was not included within the range of the company's business as defined by its registered memorandum of association; but it was maintained that the agreement was brought to the notice of every shareholder in the company after it had been made, and they, one and all, assented to it.

The point involved was not decided without a display of remarkable difference of opinion on the part of the judges. When the question was raised in the Court of Exchequer 2 out of the 3 judges *held* that the company was bound by the agreement, while the third considered that the company was free.

This difference of opinion continued when the case was carried on appeal to the Exchequer Chamber. Six Judges sat upon it in that Court, and they were equally divided. The necessity of a second appeal, so stoutly denied in the first discussions of the Judicature Bill, may be thought to be demonstrated by this example.

Barons *Martin* and *Channell*, and Justices *Blackburn*, *Brett*, and *Grove* were against the company; Baron *Bramwell*, and Justices *Keating*, *Archibald*, and *Quain* in its favour. The weight of authority was as nearly as possible equal, and, to an outsider, it would not have been easy to say on which side the probability of accuracy lay, if simply told the names of the 5 Judges on one side and the 4 on the other.

The House of Lords put an end to uncertainty. There were 5 of them present and the situation would have been curious if 3 of the Lords had been on the side of the 4 Judges below, and the remaining two Lords had agreed with the 5. But, instead of this, all the 5 law Lords were of one mind and decided that a company could not adopt and confirm a contract, or apparent contract, made in excess of the objects of the company as defined by its memorandum of association.

The practical lesson of this is that, whoever has dealings with a company must take care that the transaction is within its powers.

As the Act of 1862 now stands (section 12), the shareholders cannot even by unanimous consent alter the public document registered on their behalf, viz., the memorandum of the terms upon which they are associated, and of the character of the business they propose to transact. In order to change it, dissolution is necessary, and a fresh start would have to be made by a re-construction of the company. It is a point in which amendment of the statute might reasonably be adopted.

2.—*Contracts by Directors with their Company.*

On the 31st October, 1872, a company was incorporated to purchase the business of F. and B., at Sheffield. On the 7th of September previous, M. agreed to become a director of the then intended company, on the understanding that a clause should be inserted in the articles of association to enable him to continue to supply goods to the company, as he had previously been in the habit of supplying them to F. and B. On the 15th October, and on subsequent occasions, both before and after the incorporation of the company, M. entered into contracts with F. and B., who were the managing directors, and supplied goods upon the impression, which proved to be incorrect, that he was protected by a clause in the articles of association. The company, however, claimed the profits on all the contracts, although it was allowed on all hands that M. had acted in perfect good faith. He admitted his liability to account for the profits made by him on the contracts entered into subsequent to the incorporation of the company, but denied any liability in respect of the contracts previous to that date. In this state of things, a bill was filed against him by the company.

Held, that M. was not liable to account for the profits in respect of contracts entered into before the incorporation of the company, but only for those after that date, and that the adoption of the contracts by the company made no difference in the rights and liabilities of the parties.

Albion Steel, etc., Co. v. *Martin*, 1875, *Jessel*, M. R.; L. R. 1 Ch. D. 580; 45 L. J., Ch., 173; 33 L. T. (N. S.) 660; 24 W. R. 134.

JUDGMENT CREDITOR.

Equitable Right—27 & 28 *Vict. c.* 112, *s.* 1—*Judicature Act*, 1873, *s.* 25, *sub-s.* 8.

(i.)—Any equitable rights, which judgment creditors had previously to the Statute 27 & 28 Vict. c. 112, are not affected or taken away by that Act or by the Judi-

cature Act, 1873; and they are entitled to have, before decree in an action, a receiver appointed for the protection of property available to answer their judgment.

(ii.)—This important question was decided on appeal, affirming the decision of *Hall*, V.-C. The facts were as follows:—

An action was brought by judgment creditors, who claimed a declaration that they were entitled to a charge upon the property of the debtor, and for a receiver, and an injunction,—having previously sued out an *elegit* against the debtor's lands, but had been unable to obtain delivery by the Sheriff in consequence of the legal estate being outstanding, whereas the debtor was only entitled to an equity of redemption therein.

(iii.)—There was an unsatisfied and undisputed judgment against the defendant for a considerable sum. The defendant was in possession of freehold land in fee simple, of which he was receiving the rents. The land was subject to a mortgage, and, the legal estate being outstanding in the mortgagee, the judgment creditor could not obtain possession of it under the ordinary writ of *elegit*. It was argued that, notwithstanding the Act of Parliament, which applies equitable rules to all matters, the owner of the land could, by reason of the outstanding mortgage, remain in possession and put the rents into his own pocket, in defiance of the judgment creditor, until the trial of the action.

Anglo-Italian Bank v. *Davies*, 1878, Ct. of App. (*Jessel*, M. R., *Brett* and *Cotton*, L. JJ.); L. R. 9 Ch. Div. 275; 39 L. T. (N. S.) 244; 47 L. J., Ch., 833; 27 W. R. 3.

LIBEL.

Libel, by Shareholder, on Company.

A shareholder has no right to libel the company.—*Re Metropolitan Saloon, etc., Co., Ex parte Hawkins*, 1859; 32 L. T. 283; 28 L. J., Ch., 830; 5 Jur. (N. S.) 922.

MANAGEMENT.

Internal Management not interfered with.

The Court will not interfere in the internal management of a company. This rule was laid down in the cases of *Mozley* v. *Alston* (1 Ph. 790), and *Foss* v. *Harbottle* (2 Hare 461).—*MacDougall* v. *Gardiner*, 1875, Ct. of App.; L. R. 1 Ch. Div. 13; 33 L. T. (N. S.) 521; 45 L. J., Ch., 27; 24 W. R. 118. (*Malins*, V.-C., reversed.)

MEMORANDUM OF ASSOCIATION.

(*See* PREFERENCE SHARES, INVALID CONTRACTS.)

Section 12 of the Companies Act, 1862, enacts that, subject to the provisions for increase of capital, etc., and in the case of a change of name, "no alteration shall be made by any company in the conditions contained in its memorandum of association." The power given, by section 50 of the Act, to a general meeting by special resolution, to modify the regulations of the company, is limited to altering the regulations relating to the Management of the company, that is, the articles of association, but not altering its constitution.—*Hutton* v. *Scarborough Cliff Hotel Co.*, 1865; 2 Dr. & Sm. 514; 13 L. T. 57.

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tered mortgage of property of the company, does not prevent a firm, one of the partners in which is a director of the company, from enforcing an unregistered mortgage for securing a loan by them to the company.

(ii.)—Personal disqualifications are odious in equity, and ought not in any case to be extended further than actual decided law warrants, without absolute necessity.—*Re South Durham Iron Co., Smith's Case*, 1879, Ct. of App.; L. R. 11 Ch. Div. 579; 40 L. T. (N. S.) 572; 48 L. J., Ch., 480. (*Hall*, V.-C., affirmed.)

3.—*Consolidation of Mortgages—Vendor's subsequent Acts —Rights of Purchaser*—Tassell *v.* Smith *departed from.*

In two recent cases, viz., *Mills* v. *Jennings* (L. R. 13 Ch. Div. 639; 42 L. T. (N. S.) 169) and *Cummins* v. *Fletcher* (49 L. J., Ch., 117; 28 W. R. 772), the question of consolidation of mortgages was reviewed by the Court of Appeal, who reversed the decision of *Bacon*, V.-C., in the first case, and of *Hall*, V.-C., in the other. The principle laid down in the leading case of *Tassell* v. *Smith* (2 De Gex & J. 713) was departed from, and the view of the Court upon the question will be seen from the following remarks of *Cotton*, L. J., who, in the case of *Mills* v. *Jennings*, animadverted on the decision of *Knight-Bruce* and *Turner*, L. JJ., in *Tassell* v. *Smith*. He observed:—

"We think they did not sufficiently consider that they were allowing a subsequent act of a vendor to defeat the right acquired by a purchaser

from him. The principle laid down by their judgment would enable any settlor or vendor, of an equity of redemption, to throw a burden on those interested under the settlement or purchase, and practically to defeat the settlement or sale, by a subsequent mortgage of an entirely different estate, to secure a sum far beyond its value, which the mortgagee would be induced to advance in reliance on his right to consolidate it with the mortgage of which the equity of redemption had been settled or sold. As a rule, this Court ought to treat the decisions of the Court of Appeal in Chancery as binding authorities, but we are at liberty not to do so where there is a sufficient reason for overruling them.

"As the decision in *Tassell* v. *Smith* may lead to consequences so serious, we think that we are at liberty to reconsider and review the decision in that case as if it were being reheard in the old Court of Appeal in Chancery, as was not uncommon. In our opinion, the principle on which the rule as to consolidation of securities is based was misapplied, and, to some extent, departed from in that case. We, therefore, decline to follow that decision so far as it authorizes a subsequent mortgage effected by a vendor to be consolidated as against a purchaser from him of the equity of redemption of another estate."

MORTGAGE DEBENTURE ACTS, 1865, 1870.

The following are the principal provisions of the above Statutes, which may be made use of by Land Companies having £100,000 Capital.

Extent of Act.—This Act shall extend and apply to, and the powers hereby conferred may be exercised by, all such companies incorporated and carrying on business under "The Companies Act, 1862," or under any Act of parliament, as now or hereafter may be entitled to advance money on the security of land; and in the construction of this Act the expression "the company" means any company to which this Act applies, and which shall for the time being be availing itself of the provisions of this Act. (M. D. A., 1865, s. 2.)

No company to avail themselves of Act unless it shall comply with provisions herein named.—No company shall be entitled to avail itself of this Act, unless it shall comply with the following provisions:

First. The company must, under its Act of parliament or memorandum of association, be limited to one or more of the following objects:

1. The making of advances of money upon any of the . . . . securities [affecting property in England or Wales, of the following descriptions] :—

(*a.*) Lands, messuages, hereditaments, or real property, or some estate or interest therein:

(*b.*) Rates, dues, assessments, or impositions upon the owners or occupiers of lands, messuages, hereditaments, or real property imposed by or under the authority of any Act of parliament, public or private, royal charter, commission of sewers or drainage, or other sufficient legal authority:

(*c.*) Charges upon or affecting lands, messuages, hereditaments, or real property executed, made, given, or issued under the authority of any Act of parliament, public or private:

But from the securities described in paragraph (*a.*) shall be excepted securities upon mines or mineral property, quarries, brickfields, and factories, mills, and other buildings or works for manufacturing purposes, and also securities upon leasehold estates determinable upon a life or lives, and not renewable, or held for a term of which at the date of the security less than fifty years shall be unexpired, or which are held at a rent beyond one-fourth part of the annual value of the property leased as estimated at the date of the security given to the company and verified by the statutory declaration of a surveyor as hereinafter provided with respect to the value of the securities to be registered.

In construing this Act the word "securities" shall be deemed to mean such securities as above defined and restricted, and no others.

2. The borrowing of money on transferable mortgage debentures, or on one or more of the securities above mentioned:

Provided that any company already constituted under "The Companies Act, 1862," for the purpose of making advances on real securities, and whose memorandum of association includes but is not limited to the objects hereinbefore specified, may, by special resolution in accordance with the

provisions of that Act, alter its memorandum for the purpose of limiting and so as to limit its objects and business to those so specified; and such company shall thereupon be and become a company constituting and carrying on business under such altered memorandum, and on its being shown to the satisfaction of the registrar hereinafter mentioned that such alteration has been made, and that all obligations, if any, entered into by the company in respect of the business which prior to such special resolution it was empowered to transact, other than the business to which it will be limited after the passing of such special resolution, have been discharged, and that the articles of association of the company are in accordance with the altered memorandum, such company shall be deemed to be a company within this Act and entitled to the benefits thereof.

Second. The company must have a paid-up capital of not less than £100,000.

Third. Each share must be of the nominal value of not less than £50, of which not less than one-tenth nor more than one-half must have been paid up. (M. D. A., 1865, s. 3, amended by M. D. A., 1870, s. 4.)

Power to company to borrow money on mortgage debentures.—Subject to the provisions and restrictions of this Act, the company may from time to time borrow money upon mortgage debentures to be issued by it under the authority of this Act. (M. D. A., 1865, s. 4.)

Power to company to issue debentures not exceeding amount of registered securities, &c.—Upon the securities so from time to time registered, the company may found and issue its mortgage debentures, but so that the aggregate principal sum secured by all the mortgage debentures shall never exceed at any one time the then total amount (to be ascertained in the manner [provided in this Act]) of the registered securities of the company, and also shall never exceed ten times the amount for the time being uncalled of its subscribed share capital. (M. D. A., 1865, s. 11.)

Company to file Return in Office of Land Registry.—Before any company shall be entitled to avail itself of the provisions of "the Principal Act" and this Act, such company shall file in the office of the Land Registry a return containing the following and such other particulars as the registrar may from time to time require, which return shall be under the hand of one, at least, of the directors of the company and the secretary.

(*a.*) The amount of the nominal capital of the company:

(*b.*) The amount per share and the aggregate amount paid up on the shares:

(*c.*) The assets or property of the company at the date of the return, and how invested:

(*d.*) The names, addresses, and occupations of the directors and auditors of the company:

(*e.*) The registered office of the company. (M. D. A., 1870, s. 6.)

Company to make Quarterly Returns to Registrar.—When and so long as the company issues any mortgage debentures under this Act, and from time to time so long as any mortgage debenture so issued remains outstanding, the company shall, within ten days after every quarter day as [defined in this Act], make out and deliver to the registrar the quarterly return by this Act prescribed; and every quarterly return shall be verified by the statutory declaration of two directors and the manager, secretary, or accountant of the company. (M. D. A., 1865, s. 21.)

Total Amount of Registered Securities.—The aggregate of all principal sums remaining secured by the registered securities, together with the aggregate amount or value of the said annuities as so ascertained or estimated, shall, for the purposes of this Act, be deemed to be the total amount for the time being of the registered securities of the company. (M. D. A., 1865, s. 25.)

Terms on which Mortgage Debentures may be issued.—The mortgage debentures shall be for the payment of principal sums, either at a fixed time to be named therein, not less than six months nor exceeding ten years from the date, or at any time on six calendar months' previous notice being given to the company by the holder for the time being of the mortgage debenture, or by the company to the holder for the time being of the mortgage debenture with interest thereon in the meantime at such rate as may be agreed, payable half-yearly or otherwise, and no mortgage debenture shall be issued for a less principal sum than fifty pounds. (M. D. A., 1870, s. 16.)

No Notice of Trust receivable by Company, &c.—No notice of any trust in respect of any mortgage debenture shall be receivable by the company or the registrar. (M. D. A., 1865, s. 35.)

Transfer of Mortgage Debenture.—Every mortgage debenture may be transferred by indorsement in the Form (E.) in the schedule to this act, or to the like effect. (M. D. A., 1865, s. 37.)

Further Powers of Investment to Trustees.—In all cases in which, by the instrument creating the trust, trustees have a general power to invest trust moneys in or upon the security of shares, stock, mortgages, bonds, or debentures of companies incorporated by or acting under the authority of an Act of Parliament, they may invest such trust moneys on the security of mortgage debentures duly issued under and in accordance with the provisions of this Act. (M. D. A., 1865, s. 40.)

Company not exempt from Joint Stock Companies' Acts.—Nothing in this Act shall exempt the company from the provisions of any act relating to joint stock companies, and applicable to the company. (M. D. A., 1870, s. 18.)

MORTGAGOR'S POWER.

Mortgagor's Power to act without joinder of Mortgagee.

A mortgagor, who has the control and management of the mortgaged property, can maintain an action to restrain the breach of a restrictive covenant affecting the land by a tenant, who has notice of the covenant, and the mortgagee need not be joined, if his security is not likely to be affected.

Fairclough v. *Marshall*, 1878, Ct. of App. (*Bramwell*, *Brett*, and *Cotton*, L. JJ.); L. R. 4 Ex. Div. 37; 39 L. T. (N. S.) 389; 48 L. J., Exch., 146; 27 W. R. 145. (*Manisty*, J., reversed.)

NOTICE.

Notice to a Company.

Notice of any matter relating to the business of the company, given to any shareholder, even a director, is not constructive notice to the company itself.

This arises from the principle that individual share-

holders, and individual directors of a company, are not its Agents.—See *Powles* v. *Page* (3 C. B. 16); *Re Carew* (31 Beav. 39); and *Peruvian Railways Co.* v. *Thames, etc., Insurance Co.* (L. R. 2 Ch. App. 617.)

Notices, generally, are provided for by the Companies Acts.

OFFICIALS.

Tenure of Office.

1.—Articles of association state the arrangement between the members. They are an agreement *inter socios*, and do not constitute a contract between the company and third parties. Hence, where articles contained a clause in which it was stated that the plaintiff should be solicitor to the company, and should transact all the legal business of the company, and should not be removed from his office, except for misconduct, it was *held* (affirming the judgment of the Exchequer Division), that the plaintiff could not bring an action against the company for breach of contract in not employing him as solicitor.—*Eley* v. *Positive Assurance Co.*, 1876, Ct. of App. (*Cairns*, L. C., *Coleridge* and *Mellish*, L. JJ.); L. R. 1 Exch. Div. 88; 45 L. J., Exch., 451; 34 L. T. (N. S.) 190; 24 W. R. 338.

2.—*A Managing Director is not a Servant—Not entitled to notice.*

In the winding-up of a bank, a claim was brought by the managing director for £5,000 for the loss of his

appointment as managing director of the bank, of which he had been the principal promoter.

The Chief Clerk had allowed him £300, in lieu of notice. The liquidator appealed, and *Jessel*, M. R., *held* that, as a managing director was not a servant and could not, therefore, be entitled to notice, the sum certified by the Chief Clerk must be disallowed.—*Re Hull, etc., Bank, Ex parte Stanley*, August, 1877, Chancery Division. (Not reported.)

PAID UP SHARES.

See SHARES.

PARTNERSHIP.

Partnership Amendment Act, 1865, (28 *&* 29 *Vict. c.* 86.)

See PROFITS TO LENDERS.

POLICY.

1.—*Fire Insurance—Fire after Contract, but before Completion—Right to Insurance Moneys.*

A vendor entered into a contract with a purchaser for the sale to him of a house, which had been insured by the vendor against fire. After the date of the con-

tract, but before completion, the house was burnt down and the vendor received the insurance money from the office.

Held, that the purchaser was not entitled to recover the money from the vendor, or to be allowed the same in reduction of his purchase-money.—*Rayner* v. *Preston*, 1880, *Jessel*, M. R.; L. R. 14 Ch. D. 297; 28 W. R. 808.

2.—*Fire Insurance—Contract of Indemnity—Contracts between Landlord and Tenant—Right of Insurance Company to be recouped its loss on Policy by any benefit from other Contracts, whereby Loss is diminished.*

The above important points arose in the following case:—

F. was the owner of a house in Brighton; he demised it to B. by a lease, which rendered the lessee bound to repair, "except casualties by fire, demolition by storm or tempest of the building or any part thereof, or destruction by foreign enemies." F. insured the house in the U. Society (of which the plaintiff was secretary) by a policy against fire covering injury by explosions of gas. In 1877, the corporation of Brighton repaired the streets by a steam roller, which owing to its weight damaged a pipe and caused an escape of gas into the house demised to B., where it exploded and did considerable damage. F. sold the house and the policy to the defendant, and after some negotiation the U. Society paid to the defendant a sum of £750. The lessee, B., received compensation from the corporation of Brighton for the damage done to the house by the explosion, and, with the sum received, re-instated the house. At the time when the U. Society paid to the defendant the sum of £750 they were unaware that by the terms of the lease the lessee was bound to make good injuries done by an explosion of gas. The U. Society upon hearing that the house had been re-instated by B., claimed from the defendant the sum of £750, and, upon his refusal,

brought the present action in the name of the plaintiff. The claim of the society was held by the Court of Appeal to be good.

The decision was that, as a policy against loss by fire is a contract of indemnity, the insuring company, which had paid, was entitled to the benefit of all contracts entered into by the assured whereby the loss was diminished.—*Darrell* v. *Tibbitts*, 1880, Ct. of App. (*Brett*, *Cotton*, and *Thesiger*, L. JJ.); W. N., 1880, p. 87; 42 L. T. (N. S.) 707 (*Lush*, J., reversed.)

PREFERENCE SHARES.

1.—If the issuing of Preference shares be intended, this should be clearly stated in the memorandum and articles of association, otherwise the issuing of such would be *ultra vires* as altering the constitution of the company. If the memorandum and articles of association of a company are silent on the subject, it is an implied condition that the shareholders are entitled to rank equally as regards dividend, without preference or priority between themselves. With regard to the memorandum of association, however, in the following case, *Jessel*, M. R., *held*, that the omission as to preference shares therein was not fatal, and that implication as to no preference may be rebutted if the articles of association, *contemporaneous* with the memorandum, contain clear provisions as to the preference or priority of classes of shares.—*Harrison* v. *Mexican Railway Co.*, 1875, L. R. 19 Eq. 358; 44 L. J., Ch., 403; 32 L. T. (N. S.) 82; 23 W. R. 403.

This decision can hardly be taken as final on the point involved, for the memorandum of association of a company represents its constitution, which cannot be altered, while the articles appear by the Statute to have been designed merely as the regulations for the conduct of its business, and in this view a specimen set of regulations was furnished by Table A. in the 1st. Schedule to the Statute of 1862, but the articles can be altered by a special resolution of the company.

2.—The issuing of a subsequent batch of preference shares must, also, be distinctly provided for. Where power is only given to issue a limited number of shares an increase in the number cannot be authorized by a special resolution.—*Melhado* v. *Hamilton*, 1873; 28 L. T. (N. S.) 578; 29 L. T. (N. S.) 364; 21 W. R. 874. (*Malins*, V.-C., affirmed.)

3.—Power for the company to increase its capital, "with or without special privileges or preferences" . . . "as it may from time to time deem expedient," has been held to authorize the creation of shares with preference in repayment of capital as well as in payment of dividend.—*Re Bangor Slate Co.*, 1875; L. R. 20 Eq. 59; 32 L. T. (N. S.) 389; 23 W. R. 785.

4.—*Dividends on Preference Shares.*

If a company, having power to do so, issues preference shares, carrying a dividend at a fixed rate payable half-yearly, and with no words to restrict the preference share-

holder to the profits of the current year, it has been *held* that if the profits of any one year are insufficient to pay the full dividend, the deficiency, as between preference and ordinary shareholders, is to be made good out of the subsequent profits.—*Henry* v. *Great Northern Railway Co.*; 1 De Gex & J. 606; *Webb* v. *Earle*; L. R. 20 Eq. 536; *Ashton Vale Co.* v. *Abbot*, W. N., 1876, p. 119.

PROFITS TO LENDERS.

(*See* DEBENTURES.)

The Partnership Amendment Act, 1865, (*Bovill's Act*, 28 *&* 29 *Vict. c.* 86.)

Some points to be attended to in Agreements between Borrowers and Lenders, who are to have a Share in Profits.

1.—The borrowing of money by a company can frequently, with advantage, be effected under the powers given by the above Statute. The practice of issuing debentures is very general amongst companies, with the view to increasing the funds available for the extension of business. The mistake is, however, often made by sanguine directors of attaching to the debenture a higher dividend and a larger bonus on repayment than is profitable, or even safe, to the undertaking.

The more prudent course would undoubtedly, in most cases, be to give a share in the profits to a definite extent

to the lender, and thus leave the company in a more convenenient position. Subject to care in attending to certain points, to which we will refer, the Act may be safely and advantageously made use of by companies.

The Statute is simple and clear enough, and properly considered is free from objections. It does not purport to relieve persons, who are *de facto*, although not ostensibly, partners, from the liabilities consequent thereon, but merely to declare that receiving a share of the profits arising from the carrying on of any trade or undertaking shall "not of itself" or "by reason only of such receipt" constitute the person receiving such profits a partner.

The primary object of the Act in question was to remove certain difficulties, which it was felt might be created by the decision of the House of Lords in *Cox* v. *Hickman* (L. R. 8 H. L. Cas. 268; 30 L. J., C. P., 125), in which the question was whether the scheduled creditors to a deed of arrangement, who were to be paid their debts out of the profits of the debtor's business, were liable to debts contracted by the trustees in carrying on the business pursuant to the deed; and it was ultimately decided that they were not. Although the House of Lords had practically decided that, by sharing in the profits of a business, persons do not incur the liabilities of partners unless that business is carried on by themselves personally, or by others as their real or ostensible agents, yet the question contained elements of doubt, which the Act of 1865 was designed to remove.

2.—This Statute has, nevertheless, in many instances been wrongly applied. Lenders of money, while seeking for a share of the profits and to avoid risk by coming under the Act, have yet desired clauses to be put into the *Loan Contracts* which would give them, *inter alia*, a sort of control over the management. They have disregarded one of the tests of partnership which *Cranworth*, L. C., in his judgment had supplied, viz., "that the real ground of the liability [as a partner] is that the trade has been carried on by persons acting on behalf [of the party who is attempted to be made liable as a partner]."

To such a degree has this been done that the result has been that lenders have found themselves held by the Court to be partners.

This was illustrated in the case of *Re Megevand, Ex parte Delhasse* (L. R. 7 Ch. Div. 511; 38 L. T. (N. S.) 106), when the partners to the agreement, heedless of the warning given in the decision of *Pooley* v. *Driver* (L. R. 5 Ch. D. 458) seemed to have proceeded on the idea expressed by Lord *Chelmsford* in *Syers* v. *Syers* (L. R. 1 App. Cas. 185; 35 L. T. Rep. (N. S.) 104), that to bring the contract within the Act it was sufficient to state on the face of it that the transaction was one of loan.

With a stricter following of the provisions of the Statute, and the avoidance of conditions in the document, given to the lender as his security, of stipulations that savour of the rights and liabilities of partnership, no difficulty exists in arrangements to remunerate the lender by a share in the profits of a company.

3.—It is to be remembered that, in order that a person lending money may be entitled to the benefit of the Act, the contract must be in writing, and signed.

This was held in the case of *Pooley* v. *Driver* (see *sup.*), which is contrary to the previous opinion of *Lindley*, J., given in the 3rd edition of his work on Partnership.

4.—A person who was to be paid a debt owing to him by two persons, and also the price of certain goods supplied by him, out of the profits of a Building speculation if sufficient, was held not to be thereby constituted a partner so as to be liable for timber supplied for the building.—Per *O'Brien*, J., in *Smith* v. *Galt;* 16 Ir. C. L. Rep. 357, 375.

5.—A clerk who was entitled to a fixed salary, and also to one-third of the net profits of a business, has been held not to be liable as a partner.—*Kilshaw* v. *Jukes*, 8 L. T. (N. S.) 387.

6.—The following case bears upon the question of mortgages at interest varying with profits, and the subsequent bankruptcy of the borrower.

(i.)—A trader assigned a leasehold house where his business was carried on, and the goodwill of the business, to secure the payment of £2,000, and such a sum in lieu of interest as should be equal to one-half of the net profits computed half-yearly. The trader having filed a petition for liquidation, it was attempted to postpone the mortgagee to the other creditors, even in respect of his security; but it was held by the Court of Appeal that he had not, by the terms of the mortgage, lost the benefit of his security so as to be postponed under the operation of the 5th section.

(ii.)—*Jessel*, M. R., observed:—"There is not a word in the 5th section inflicting any penalty or disability [upon a mortgagee], or any confiscation upon him, in respect of a mortgage, which he has so taken. He is not seeking to recover anything in the shape of money. He only says:—'I have or can obtain the legal possession of the house. I have that for a legal term of years. I do not wish to recover anything from the bankrupt or his estate.' That being so, it does not appear to me that the section applies to him at all. He still retains the possession of the house subject to redemption as before the bankruptcy, and if the trustee in the bankruptcy thinks fit to say, 'I will take the house from you,' he is at liberty to do so upon the terms of the mortgage deed. Now we are asked to extend this, a penal Statute, beyond its terms, and to make equivalent to confiscating the property of the mortgagee. To do that would not be to carry out the object of the Legislature, but to legislate, which is a thing we ought not to do."

(iii.)—". . . . . The right of the mortgagee to keep the estate did not depend on his right to recover the debt in an action, but the two rights were wholly independent the one of the other. His right was not to recover the money, but to keep the estate till the money was paid, which is a totally different thing. It appears to me, therefore, that the decision of the [Court below] is correct, and that it ought to be affirmed."

Per *James*, L. J.:—"I think the word '*recover*' means recover, and does not mean '*retain*.'"

Re Lonergan, Ex parte Sheil, 1877, Ct. of App.; L. R. 4 Ch. Div. 789; 36 L. T. (N. S.) 270; 46 L. J., Bkcy., 62; 25 W. R. 420.

PROFITS TO LENDERS (CONTINUED.)

An Act to amend the Law of Partnership (28 & 29 *Vict. c.* 86.)
[5th July, 1865.]

Whereas it is expedient to amend the law relating to partnership: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons,

in this present parliament assembled, and by the authority of the same, as follows:

1.—*The Advance of Money on Contract to receive a Share of Profits not to constitute the Lender a Partner.*

The advance of money by way of loan to a person engaged or about to engage in any trade or undertaking upon a contract in writing with such person that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits arising from carrying on such trade or undertaking, shall not, of itself, constitute the lender a partner with the person or the persons carrying on such trade or undertaking, or render him responsible as such.

2.—*The Remuneration of* [*Servants*] *Agents, &c., by Share of Profits not to make them Partners.*

No contract for the remuneration of a servant or agent of any person engaged in any trade or undertaking by a share of the profits of such trade or undertaking, shall, of itself, render such servant or agent responsible as a partner therein, nor give him the rights of a partner.

3.—*Certain Annuitants not to be deemed Partners.*

No person being the widow or child of the deceased partner of a trader, and receiving by way of annuity a portion of the profits made by such trader in his business, shall, by reason only of such receipt, be deemed to be a partner of or to be subject to any liabilities incurred by such trader.

4.—*Receipt of Profits in Consideration of Sale of Goodwill not to make the Seller a Partner.*

No person receiving by way of annuity or otherwise a portion of the profits of any business, in consideration of the sale by him of the goodwill of such business, shall, by reason only of such receipt, be deemed to be a partner of or be subject to the liabilities of the person carrying on such business.

5.—*In case of Bankruptcy, &c., Lender not to rank with other Creditors.*

In the event of any such trader as aforesaid being adjudged a bankrupt, or taking the benefit of any act for the relief of insolvent debtors, or entering into an arrangement to pay his creditors less than twenty shillings

in the pound, or dying in insolvent circumstances, the lender of any such loan as aforesaid shall not be entitled to recover any portion of his principal, or of the profits or interest payable in respect of such loan, nor shall any such vendor of a goodwill as aforesaid be entitled to recover any such profits as aforesaid until the claims of the other creditors of the said trader for valuable consideration in money or money's worth have been satisfied.

6.—*Interpretation of "Person."*

In the construction of this Act the word "person" shall include a partnership firm, a joint stock company, and a corporation.

PROMOTERS.

(*See* AGENTS.)

Fiduciary relation to the Company.

(i.)—The promoters of a company stand in a fiduciary relation towards it, and are bound to give the company the opportunity of exercising, through fair and independent directors, an independent judgment upon all matters affecting its interest.

(ii.)—They have in their hands the creation and moulding of the company; they have the power of defining how, and when, and in what shape, and under what supervision it shall start into existence and commence to act as a trading corporation. If they are doing all this in order that the company may, as soon as it starts into life, become, through its managing directors, the purchaser of a property from themselves, the promoters, it is incumbent upon them to take care that, in forming

the company, they provide it with a board of directors, who shall both be aware that the property, which they are asked to buy, is the property of the promoters, and who shall be competent and impartial judges as to whether the purchase ought or ought not to be made. (Per *Cairns*, L. C.).—*Erlanger* v. *New Sombrero Phosphate Co.*, 1878, H. of Lords; L. R. 3 App. Cas. 1218; 39 L. T. (N. S.) 269; 48 L. J., Ch., 73; 27 W. R. 65.

(iii.)—It is an entire mistake to suppose that, after a company is registered, its directors are the only persons who are in such a position towards it as to be under fiduciary obligations to it. A person, not a director, may be construed to be a promoter of a company, which is already incorporated, but the capital of which has not already been taken up, and which is not yet in a position to perform the obligations imposed upon it by its creators.—*Twycross* v. *Grant*, 1877, Ct. of App.; L. R. 2 C. P. Div. 469; 36 L. T. (N. S.) 812; 46 L. J., C. P., 636; 27 W. R. 701.

(iv.)—A company can recover from a person (who is found to have been covertly acting as a promoter, while his name appeared on the prospectus in another capacity), any money (or the value of shares) he has received as a gift from the vendors or ostensible promoters, although the company's contract with the latter has not been rescinded.—*Emma Silver Mining Co.* v. *Lewis*, 1879, C. P. Div. (*Coleridge*, C. J., *Denman* and *Lindley*, JJ.); L. R. 4 C. P. Div. 396; 40 L. T. (N. S.) 749; 48 L. J., Q. B., 504.

PROMOTERS' CONTRACTS.

1.—*What Contracts must be disclosed in order to comply with Section* 38 *of the Companies Act*, 1867.

(i.)—In *Twycross* v. *Grant* (see PROMOTERS) it was decided that the contracts, which must be disclosed, in order to comply with section 38 of the Companies Act, 1867, are contracts that are calculated to influence persons reading a company's prospectus in making up their minds whether or not they will apply for shares in it.

(ii.)—In the case of *Sullivan* v. *Mitcalfe*, on which judgment was given, June, 1880, by the Court of Appeal, the question again turned upon the construction of section 38.

"A company was formed for the purchase of a patent. The purchase money was to be £56,000 and the contract to this effect was duly set forth in the prospectus. But by a series of secret contracts, not set forth in the prospectus, the vendor was, in effect, to receive £2,000, the balance being paid back to the promoters, or some of them, and divided amongst them without the knowledge of the shareholders. When the plaintiff, who had subscribed £1,600 for 200 shares, discovered these facts he brought an action for the recovery of his money.

"The defendant pleaded that the contracts between the vendor and promoters were not contracts within the meaning of the Act, but their plea was overruled by *Grove*, J."

(iii.)—In the above case the Court of Appeal decided that the enactment includes every contract, made before the prospectus is issued, the knowledge of which might have an effect upon a reasonable man in determining

him to give, or withhold, faith in the concern, whether or not it would impose any liability on the company;—in other words, that all contracts should be disclosed, which relate to the formation of the company, or its capital, property, or business when formed, or its position with regard to its promoters, or vendors, or directors, if any of the parties are promoters, directors, or trustees.—*Sullivan* v. *Mitcalfe*, 1880, Ct. of App. (*Baggallay* and *Thesiger*, L. JJ.,—*Bramwell*, L. J., dissenting); W. N., 1880, p. 132. (*Grove*, J., affirmed.)

(iv.)—This decision disposes of the argument that it does not matter to the purchaser what the vendor does with the money received; for the Courts hold that it matters very much indeed, if he pays part back as a '*pot de vin*' to the agents through whom the purchase was effected. The point is well put by a writer on the subject:—

"The principle of a reasonable commission for agency is recognized in all commercial transactions; but it is altogether distinct from an exorbitant and clandestine payment to promoters and directors, who are thus secretly converted into agents seeking only their own profit, while they remain openly purchasers, supposed to be acting in the interest of the whole body of shareholders.

"Such a transaction at once dissociates the interests of the directors from those of the shareholders. Their profit is fraudulently made at the outset, and they have no longer any material interest in the future welfare of

the company; they have pocketed the shareholders' money committed to them on trust for other uses; they have purchased a worthless article on the strength of their own credit and repute; and they are as plainly guilty of fraud, in a moral sense at least, as any thimble-rigger on a racecourse."

2.—*Contracts before Registration of Company—Non-Ratification—Condition for their adoption by Company.*

(i.)—In the case of *Melhado* v. *Porto Allegre Railway Co.* (L. R. 9 C. P. 503), *Coleridge*, C. J., said:—

"There can be no implied contract between a company and its promoters, and a company cannot ratify any contract purporting to be entered into on its behalf before it is registered." On this principle was decided the case of *Kelner* v. *Baxter* (L. R. 2 C. P. 174), in which the defendants had signed the contract as agents for a proposed company, and the Court held that if the company had existed at the time of the contract, the persons signing it would have signed as the agents of the company; but, as it was not then existing, the contract must be binding on them personally, and that they could not be discharged from their liability under the contract by its adoption by the company without the consent of the plaintiffs, the other contracting parties.

Willes, J., observed therein:—

"I apprehend the company could only become liable on a new contract, Could the company become liable

by a mere ratification? Clearly not. Ratification can only be by a person ascertained at the time of the act done."

(ii.)—In the case of *Touche* v. *Metropolitan Warehousing Co.* (L. R. 6 Ch. App. 671) the plaintiffs were the promoters of a scheme which was to be incorporated with the company. The Articles of Association of the company provided that it had been arranged with W. that he should pay to "certain persons" (*i.e.*, as was admitted, to the plaintiffs) for the labour and expense incurred by them in connection with the above-mentioned scheme, the sum of £2,000; and that the directors should, as soon as 10,000 shares had been subscribed for and paid upon, pay to the said W. the sum of £2,000. The said 10,000 shares were subscribed for and paid upon, and the plaintiffs applied to W. who was managing director of the company, as well as the company, for payment of the £2,000, and, failing to obtain the amount thereof, filed their bill against the company, claiming the same. *Stuart*, V.-C., decided in favour of the plaintiffs, and, on appeal, this decision was affirmed. *Hatherley*, L. C., said that the company would not have been bound by any agreement previous to its registration, but it was bound by the stipulations inserted in its Articles of Association; that these stipulations amounted to a contract on the part of the company, which had had the benefit of the services of the plaintiffs, to pay £2,000 to W. as a Trustee for them; and that the plaintiffs had, in his opinion, a right to come to the Court of Chancery to obtain the benefit of that contract, the case falling within the principle that, where a sum is payable by A. B. for the benefit of C. D., C. D. can claim under this contract, as if it had been made with himself.

The distinction between the position of the plaintiffs in the above cases is this: there was no contract between the company and the plaintiffs in the former case, and there was a contract between the company and the plaintiffs, through W. as a Trustee for them, in the latter.

PROMOTERS' EXPENSES.

In the case of *Emma Silver Mining Co.* v. *Grant*, 1879, (L. R. 11 Ch. D. 918; 40 L. T. (N. S.) 804) *Jessel*, M. R., allowed the promoter to deduct from the amount of Secret Profit which he had received, and before returning the same to the company, all sums *bonâ fide* expended in securing the services of the Directors and providing their qualification, and in payments to the Brokers and Officers of the company, and to the public press in relation to the company. In so doing, the Master of the Rolls carried the doctrine of allowances to a "promoter" considerably further than was done by the Court of Appeal in *Bagnall* v. *Carlton* (L. R. 6 Ch. Div. 371; 37 L. T. (N. S.) 481.)

PROMOTERS' REMUNERATION.

(*See* EXPENSES.)

1.—*Indemnity to Individual Subscribers—Liability of Company for Services and Expenses recognized in the Winding-up.*

A solicitor who was promoting a railway company induced various persons to sign the Subscription Contract, by an assurance that they should *incur no liability if the line was not made.* Some of these persons were provisional directors. The Act was obtained, and contained the usual clause that the Preliminary Expenses should be paid by the company. The line was not made. The undertaking was abandoned, and the company ordered to be wound up. The solicitor carried in a claim

as Creditor for professional services in obtaining the passing of the Act. This claim was opposed by some of the contributories, on the ground of the above assurances :—

Held, by *Cairns*, L. C., and *Mellish*, L. J., (affirming the decision of *Bacon*, V.-C.), that the solicitor was entitled to prove; for that the assurances made by him could only operate as a contract to indemnify the individuals to whom they were made, and did not exonerate the company in its corporate capacity. *Savin* v. *Hoylake Railway Co.* (L. R. 1 Exch. 9), distinguished. *Mellish*, L. J., said :—

"Whether such an indemnity had been given or not, all the subscribers were liable under the winding-up order to pay the expenses. The question whether the appellants had any remedy under an indemnity was a question for a court of law."

Re Brampton, etc., Railway Co., Addison's Case, 1875; L. R. 10 Ch. App. 177; 44 L. J., Ch., 670.

2.—*Charge for Services disallowed.*

The Court of Appeal decided that,—where Promoters arrange to obtain from Vendors a pecuniary payment out of, or in respect of, the Purchase-money of the property, which the company has been formed to purchase, and this fact is concealed from the company,—the promoters cannot make any claim for professional services rendered to the company.—*Re Hereford, etc., Wagon Co., Walter and Head's Claim*, 1876, Ct. of App. (*James, Mellish*, and *Baggallay*, L. JJ.); L. R. 2 Ch. Div. 621; 45 L. J., Ch., 461; 35 L. T. (N. S.) 40; 24 W. R. 953. (*Hall*, V.-C., reversed.)

3.—*Shares agreed to be taken up by Promoter coupled with another Agreement to pay him a Sum of Money for Services.*

In a case under the above circumstances,—(i.) the Promoter has been held liable under his first agreement separated from the second,—and (ii.) that, in the absence of any proof of *mala fides*, the resolution of directors to call up the amount of the shares is conclusive evidence that the money is required for the purposes of the company.—*Odessa Tramways Co.* v. *Mendel*, 1878, Ct. of App.; L. R. 8 Ch. Div. 235; 38 L. T. (N. S.) 731; 47 L. J., Ch., 505; 26 W. R. 887. (*Fry*, J., affirmed.)

PROSPECTIVE PAYMENTS.

(*Inclusive of Prospective Interest.*)

1.—In consideration of a loan of £50, the sum of £70 (which was to cover interest and other charges) was to be paid by monthly instalments of £3 : 10*s.* over a term of five years, or, in default, the whole of the instalments were to be payable at once:—

After payment of some instalments, another instalment became due, and the borrower made default, on which the company sued the surety for the Whole Amount remaining outstanding, that is, for about £52. The defendant paid into court the instalment due, and denied any further liability at present. The case was heard before *Bowen*, J., without a jury, the facts not being in dispute, and the learned Judge gave judgment for the defendant, on the ground that the provision, which made the whole of the remaining Instalments at once due and payable, was one n

the nature of a Penalty, against which a Court of Equity would have given relief, so that now, since the fusion of Law and Equity, under the Judicature Act, the company were not entitled to recover more than the instalment actually due, except, perhaps, a trifling sum for interest upon it, as to which the learned Judge applied the principle *de minimis non curat lex*. The reason given by the learned Judge was that, by recovering all the instalments at once, the company would virtually recover interest not due—*i.e.*, the interest or insurances on Future instalments, although the real object was to secure the payment of the instalments as they became due. Against that judgment the company appealed.

On Appeal, it was *held*, that, as this was part of the terms of the contract on which the loan was obtained, viz., that on default in payment of any instalment the whole should be repayable, this did not come within the rule of equity as to a Penalty. *Cockburn*, C. J., observed, that "it was a strange anomaly in the law that it should defeat the contracts made by the parties, and the courts should rather struggle against it than extend it to cases in which it was not applicable. The parties quite understood the effect of the stipulation, and there was nothing in reason or justice against it. Default in payment of an instalment might fairly raise a suspicion of insolvency, and the whole might well be made payable."

Protector Endowment, etc., Co. v. *Grice*, 1880, Ct. of App. (*Cockburn*, C. J., *Baggallay*, *Bramwell*, and *Brett*, L. JJ.); W. N., 1880, p. 119.

2.—In another case, a loan society had advanced £250 to B. upon condition of his paying to the society £550 by monthly instalments, in respect of the loan and interest, which sum was, in fact, the aggregate of the Repayment Annuity secured. It was contended for the society that the debt was one payable *in futuro* by instalments, and, therefore, within sect. 31, cl. 3, of the Bankruptcy Act, 1869, and r. 77 of the Bankruptcy Rules, 1870.

Held (affirming the judgment of the County Court), that the society was entitled to prove for the full

amount claimed, upon the ground that the Original debt was a certain sum of £550, and consequently did not come within the rule, by which all Interest is made to cease at the date of the Bankruptcy.—*Re Lundy, Ex parte Cockburn*, 1878, *Bacon*, C. J.; 39 L. T. (N. S.) 362.

3.—*Liability, in case of Action, to pay Prospective Payments into Court.*

The question of whether the defendant should not be required to pay into Court the full amount of the debt, represented by the prospective payments secured to the lender, was decided in the affirmative by the Court of Appeal. This conclusion was, however, reversed by the House of Lords, who ordered that the defendant should have leave to defend the action without paying the money into Court.—*Wallingford* v. *Mutual Soc.*, 1880, H. of Lords; W. N., 1880, p. 109.

PROSPECTUS.

1.—*Misrepresentation—Shares-Contract, when it can be Rescinded.*

(i.)—Great care must be exercised in framing a prospectus, so as to give no excuse to a member for alleging that he was induced to become a Shareholder by Misrepresentations in the prospectus. If such were the case, he would be entitled to be relieved of the shares,

and could apply to be taken off the register of shareholders, under section 35 of the Companies Act, 1862.

(ii.)—In the case of *Houldsworth* v. *City of Glasgow Bank*, H. of L., (L. R. 5 App. Cas. 317; 42 L. T. (N. S.) 194), it was *held* that a Contributory, in the winding-up of a company, could not, after the winding-up order, claim Rescission of his contract with the company upon the ground of fraudulent misrepresentations, which, if the bank had been a going concern, might have entitled him to rescind.

(iii.)—It was argued in a later case, 1880, of *Re Hull and County Bank* (28 W. R. 792), that the right, which existed up to the date of the order for the winding-up, to rescind the contract upon the ground of Fraud, was not after that date taken away, if the position of Creditors was in no way harmed by the removal of a contributory where there was no body of creditors to be paid, or there were assets more than sufficient to pay any that existed, and the costs of the liquidation; also that the liability of the contributories alone being increased, *inter se*, by the removal of a name from the list, the reasoning in *Houldsworth* v. *City of Glasgow Bank* did not apply. But in the case of *Re Hull, etc., Bank*, the Master of the Rolls said that, after looking at the case cited and the 38th section of the Companies Act, 1862, he could see no substantial distinction between the cases. The special point, if not exactly discussed before the House of Lords, was nevertheless, in his opinion, within the decision there arrived at. The

respondent should have at once taken steps to rescind his contract, and not have waited until the Winding-up order had been obtained. He added:—

"If the contention of the respondent was held to be correct, the logical conclusion would be that he would be able to sue his co-contributories for damages, although they, as well as he, had been deceived. The respondent's name must be placed on the list of contributories."

PROXY.

1.—*Poll, as to Demand of, at Meeting.*

If the Articles of association provide that a shareholder, in order to demand a Poll, must be the holder of a *maximum* number of shares, he cannot, if he hold less, demand a poll on the ground that he also holds Proxies which would bring up the aggregate to the required amount.—*Reg.* v. *Government Stock Investment Co.*, 1878, *Cockburn*, C. J., and *Mellor*, J.; L. R. 3 Q. B. D. 442; 39 L. T. (N. S.) 231; 47 L. J., Q. B., 478.

2.—*Signed in blank.*

A person, who receives a signed proxy in blank for use at a meeting, has implied authority to fill it up with his own name and to vote.

The preceding was decided by the Court of Appeal in the matter of voting at a creditors' meeting, but the principle involved and the opinion of the Court are of

general application.—*Re Whitehouse, Ex parte Duce*, 1880, Ct. of App.; L. R. 13 Ch. Div. 429; 42 L. T. (N. S.) 385; 28 W. R. 501. (*Bacon*, V.-C., affirmed.)

PURCHASER.

Purchaser without Notice of Bankruptcy—Loss of Purchase Money—Section 95 of the Bankruptcy Act, 1869.

A purchaser, D., of leasehold property, paid a deposit and then the balance of the price to the vendor, P., having had no notice of an act of bankruptcy, which vested the vendor's effects in a trustee, under the Statute of 1869.

The trustee was thus assignee of the bankrupt's property, subject to equities arising out of a previous contract for sale. The purchaser, D. had no right to compel a conveyance, except upon payment of the balance of the purchase money to the person entitled to receive it.

Held (reversing the decision of Mr. Registrar *Murray*, sitting as Chief Judge in Bankruptcy), that the payment to the Bankrupt was not a good payment, and that it was not a payment protected by the 95th section of the Act, because it was made after the order of Adjudication.

"It was not a payment to the bankrupt as Agent of the trustee, for there were no special circumstances to raise any presumption of agency, and—apart from special circumstances,—there is no implied authority in a bankrupt to receive money on behalf of his Trustee." (Per *Thesiger*, L. J.)

Re Pooley, Ex parte Rabbidge, 1878, Ct. of App. (*James*, *Cotton*, and *Thesiger*, L. JJ.); L. R. 8 Ch. Div. 367; 38 L. T. (N. S.) 663; 26 W. R. 646.

PURCHASING OF SHARES.

See SHARES.

QUALIFICATION OF DIRECTORS.

1. - *Acceptance of the Office of Director, without being a Shareholder.*

(i.)—*Jessel*, M. R., in his judgment in *Re Pelotas Coffee Co., Karuth's Case*, 1875, (L. R. 20 Eq. 506), defined the law governing the above point, as follows:—

"On the authorities, the mere acceptance of the office of director does not make a man a shareholder in respect of the number of shares necessary to qualify him; but the acceptance of the office, and the acting as a director, will be taken as an implied agreement on his part to qualify himself within a reasonable time, and he will not be allowed afterwards to contradict his own conduct."

(ii.)—In another case, however, where the articles of association of a limited company provided that "no person shall be qualified to be a director who is not a holder of shares or stock in the company of the nominal value of £500," it was *held* by the Court of Appeal (affirming the decision of *Jessel*, M. R.), that the election of a director was invalid, who did not hold the necessary qualification, as it was a condition precedent to the election; that his acting as a director was no evidence of a contract to acquire the qualifying shares; and that his name could not be placed on the list of contributories.—*Re Percy, etc., Mining Co., Jenner's Case*, 1877, Ct. of App.; L. R. 7 Ch. Div. 132; 37 L. T. (N. S.) 807; 47 L. J., Ch., 201; 26 W. R. 291.

2.—*As to Misfeasance, Section* 165, *Companies Act*, 1862.

In a later case, 1880, of *Re Canadian Land, etc., Company*, it was *held* by the Court of Appeal (reversing a decision of *Jessel*, M. R.,) that:—

(i.)—Although a director *de facto* is liable for damage resulting to the company as if he had also been a director *de jure*, the mere fact that a director has acted without holding the qualification shares, required by the articles of association—if no damage has resulted to the company—does not make him liable in the winding-up to pay the price of the qualification shares, or guilty of a misfeasance, within section 165 of the Companies Act, 1862.

(ii.)—The section does not create any new liability or right, but merely a more convenient means of enforcing rights and remedies, which would have been enforceable by the ordinary procedure of the Court, if there had been no winding-up.

(iii.)—Misfeasance in the section means something in the nature of a breach of Trust.

(iv.)—*Jessel*, M. R., had *held* that section 165 applied, and that each of the directors of the company must pay £500,—being damages measured by the shares each had omitted to hold. A view quite opposite was taken by *James*, L. J., on appeal, who said:—

The Master of the Rolls "has not been construing any Act of Parliament or any rule of the Court, but he has been legislating for the

purpose, redressing in this case a wrong, and by means of this example putting a stop to a proceeding, which is no doubt wrong, that is to say, of persons acting as directors without having the qualification which the Articles require them to have. It may be very right that the Legislature should declare that, where there is a qualification prescribed for the office of director, every person acting as a director, or holding the office of director, should be held to have the number of shares constituting his qualification. That might be a very right thing for the Legislature to say, or it might be a very wrong thing. But the Legislature has never said it, or said anything to my mind at all equivalent."

Baggallay and *Bramwell*, L. JJ., were equally confident that the section "had been applied [in the decision appealed against] in a manner which was not warranted."

Re Canadian Land, etc., Co., Coventry and Dixon's Case, 1880, Ct. of App.; W. N., 1880, p. 81; 42 L. T. (N. S.) 559; 28 W. R. 775.

3.—*Shares presented to Directors—Misfeasance—Liability by section* 165.

(*See* DIRECTORS, SHARES.)

The question of misfeasance arose in the following case, where it was *held* that, to bring a case within section 165, it is not necessary to find that the directors had been guilty of Fraud or of anything morally wrong. The section applies to a misfeasance of an innocent nature. It is only necessary to find:—

(i.)—That the moneys of the company have been applied by the directors to purposes to which they ought not to have been applied.

(ii.)—That this has been done without the exercise of due care and caution on the part of the directors.

A company was formed for the purchase of a colliery. The company agreed to pay S., the promoter, 3½ per cent. upon the capital for preliminary expenses. The colliery was purchased by a nominee of S. for £4,500 in cash and £11,000 in shares, and was sold to the company for £8,500 in cash and £40,500 in shares. When only 1,560 shares had been subscribed for, the directors handed over £3,500 to S. for preliminary expenses, and out of that sum he paid £500 to each of the directors, with which they paid the calls upon fifty shares each for their qualification as directors. The company being wound-up, £500 was repaid by one director and £150 by another. On an application on behalf of the official liquidator that all the directors might be declared jointly and severally liable to repay the amount paid to them by S.:—

Held, by the Court of Appeal (differing from *Malins*, V.-C.), that the directors were not guilty of deliberate or actual fraud in any sense, and therefore could not be made liable, on that ground, to repay the amount paid to them by S.; but—

Held (affirming the decision of *Malins*, V.-C.), that the payment to S. was a misapplication of the funds of the company, for which the directors were jointly and severally liable, under section 165 of the Companies Act, 1862.—*Re Englefield Colliery Co., Ex parte Wingrove*, 1877-8, Ct. of App.; L. R. 8 Ch. Div. 388; 38 L. T. (N. S.) 112.

4.—If no qualification is required by the Articles, a qualification cannot be created by mere resolution of the subscribers to the memorandum of association—*Re Patent Davit, etc., Co., Ranken's Case*, 1879, *Bacon*, V.-C.; 39 L. T. (N. S.) 664.

REGISTER.

Rectification of Register—Dispute as to Title to Shares—Jurisdiction.

The Court, or a Judge, has jurisdiction to rectify the register of members of a company, under the Companies Act, 1862, section 35, where the dispute is between two individuals as to title to shares.—*Re Diamond Rock Boring Co., Ex parte Shaw*, 1877, Ct. of App.; L. R. 2 Q. B. Div. 463; 36 L. T. (N. S.) 573; 46 L. J., Q. B., 395; 25 W. R. 569. (Judgment of Exch. Div. affirmed.)

REGULATIONS.

See ARTICLES OF ASSOCIATION.

REPORTS.

Reports with Fraudulent Statements—Who liable.

(*See* FALSE REPORTS.)

(i.)—Where documents contain fraudulent misrepresentations, those persons only are responsible for the particular documents who put them forth, and the company is liable for them only so far as they were put forth in the ordinary course of business.

As a general rule, one agent is not responsible for the act of another, unless he does something by which he makes himself a principal in the fraud.

Cargill v. *Bower*, 1878, *Fry*, J.; L. R. 10 Ch. D. 502; 38 L. T. (N. S.) 779; 47 L. J., Ch., 649; 26 W. R. 716.

(See *Barclay's Case* in *Peek* v. *Gurney*, L. R. 6 H. L. Cas. 377, 403.)

(ii.)—In another case of Misrepresentation, where money was raised on debentures, a director, innocent of any *moral* fraud, was held not liable, the judgment of the Exchequer Division being affirmed on appeal.

The concordance in the view taken by the Judges is worthy of notice. The number was seven, of whom six Judges were in favour of the decision as above stated. In the Exchequer Division, *Kelly*, C. B., *Pollock* and *Huddleston*, BB., were in favour; in the Court of Appeal, *Cockburn*, C. J., *Bramwell* and *Brett*, L. JJ., were in favour; and *Cotton*, L. J., was against the decision.

Weir v. *Barnett*, 1877, L. R. 3 Ex. Div. 32, 240; 38 L. T. (N. S.) 929; 26 W. R. 147.

RESOLUTION.

As to its being required to be Seconded.

(*See* VOTING.)

This has been held not necessary for the validity of a resolution passed by a meeting of shareholders. There is no law which requires a motion to be seconded, although there is a common opinion amongst the public to the contrary.—*Re Horbury, etc., Wagon Co.*, 1879, Ct. of App. (*Jessel*, M. R., *James*, *Bramwell*, and *Brett*, L. JJ.); L. R. 11 Ch. Div. 109; 40 L. T. (N. S.) 353; 48 L. J., Ch., 341; 27 W. R. 433.

SALE CONDITIONS.

(*See* AGREEMENT.)

Misleading Conditions.

(i.)—If, upon evidence, disclosed by the statement of title, the conditions of sale were misleading, they will not be binding.

(ii.)—An error of the conveyancing counsel of the Court is treated as an error of the vendor, for the conveyancing counsel must be treated as the agent of the vendor as between the vendor and the purchaser.—*Re Banister, Broad* v. *Munton*, 1879, Ct. of App. (*Jessel* M. R., *Brett* and *Cotton*, L. JJ.); L. R. 12 Ch. Div. 131; 40 L. T. (N. S.) 828; 27 W. R. 826. (*Fry*, J., reversed, on facts not before him.)

SECURITIES.

Bills of Sale Act, 1878 (41 & 42 *Vict. c.* 31)—*Want of Attestation and Registration.*

A bill of sale made after the passing of the Bills of Sale Act, 1878, and not attested or registered as required by the Act, is valid as between grantor and grantee. —*Davies* v. *Goodman*, 1880, Ct. of App. (*Bramwell, Baggallay*, and *Thesiger*, L. JJ.); L. R. 5 C. P. Div. 128; 42 L. T. (N. S.) 288; 49 L. J., C. P., 344; 28 W. R. 559. (Judgment of C. P. Div. reversed.)

SET OFF.

See WINDING UP, *Set-off*.

SHARES.

(*See* DIRECTORS, MEMORANDUM OF ASSOCIATION.)

1.—*Paid-up shares—Effect of Section* 25—*Third party, how affected by neglect of the Section—Estoppel.*

(i.)—In the case of *Burkinshaw* v. *Nicolls*, the House of Lords decided that section 25 of the Companies Act, 1867, means no more than this, that no contract by which shares shall be considered as duly paid-up, when they are not in fact paid-up, shall be valid unless it be registered, and that when there is no such registered contract the shares shall be payable in cash.

The section does not say, however, that every one, who has become a shareholder, under any circumstances, shall be compelled to pay them up in cash.

(ii.)—Shares in a joint stock company were issued as fully paid-up, by virtue of a contract, which was not registered as required by the Act, and certificates were issued in which the shares were described as fully paid-up. Some of these shares were transferred to the respondent as trustee for B., for value, without notice of the irregularity, B. holding the certificates. The company was afterwards wound-up, and the liquidator sought to make the respondent liable as the holder of shares on which nothing had been paid.

Held (affirming the judgment of the Court of Appeal, which had reversed an order of *Hall*, V.-C.), that the company, and consequently the liquidator, were estop-

ped by the certificates from saying that the shares were not fully paid-up, as against a *bonâ fide* holder for value, without notice.—*Burkinshaw* v. *Nicolls*, 1878, H. of Lords; L. R. 3 App. Cas. 1004; 39 L. T. (N. S.) 308; 48 L. J., Ch., 179; 26 W. R. 819.

2.—*Mistake—Promoters, Agreement with—Paid-up Shares—Non-Registration of Contract.*

Certain shares were allotted and accepted as fully paid-up, in pursuance of a contract with a trustee for the company, which, through inadvertence, had not been registered in accordance with section 25 of the Companies Act, 1867. Upon discovery of the omission, the directors cancelled the shares and removed the name of the allottee from the register, then registered the contract, and, subsequently, issued fresh shares to the allottee. The company was afterwards wound-up.

Held by *Cairns*, L. C., and *Mellish*, L. J. (affirming the decision of *Jessel*, M. R.), that the directors had power to rectify a mistake which was common to them and the allottee, and that the transaction could not be disturbed:

Held, also, that a contract with a Trustee for a company is within the meaning of section 25 of the Companies Act, 1867.—*Re Poole Firebrick Co., Hartley's Case*, 1875; L. R. 10 Ch. App. 157; 32 L. T. (N. S.) 106; 44 L. J., Ch., 240; 23 W. R. 203.

3.—*Promoters—Paid-up Shares given to Promoters and others for Services—Directors' personal Liability therefrom.*

The directors at a meeting (at which M. was present and voted) made an agreement to give certain paid-up shares to S. for services to be rendered to the company. The agreement was *not* registered. The ser-

vices having been rendered, the directors paid the amount of the paid-up shares to T., one of their body, who thereupon transferred the agreed number of paid-up shares held by himself to S. The articles of association forbade the directors from buying the company's shares.

Held (affirming the decision of *Jessel*, M. R.), that the payment to T. was really in purchase of his shares, and was a breach of the articles; that the transfer of the shares to S. was a breach of section 25 of the Companies Act, 1867; and that M., having negligently allowed the transaction, was liable to repay the amount to the liquidator.—*Re Railway, etc., Co., Marzetti's Case*, 1880, Ct. of App.; W. N., 1880, p. 50; 42 L. T. (N. S.) 207; 28 W. R. 541.

4.—*Shares accepted by Directors from Promoters—Liability.*

(*See* DIRECTORS, PRESENTS TO.)

Shares accepted by a director from promoters belong to the company, and the recipient is a Trustee for it. Restitution of the shares is not sufficient, and if the company elect to take their value, the recipient has been held liable to pay to the company the value per share at the time when the shares were transferred to him, with interest at 4 per cent. per annum from the date of transfer, and the costs of the action.

The effect of the judgment was that the defendant had to pay £80 per share, being the price at which the shares were quoted soon after the allotment, although five years were allowed to elapse before the action was

brought, and at that time the value of the shares had fallen to £1 per share.

It was held that the principles and law in *McKay's Case* (L. R. 2 Ch. Div. 1; 33 L. T. (N. S.) 517) and in *Pearson's Case* (L. R. 5 Ch. Div. 336) are equally applicable to proceedings under the Companies Act, 1862, s. 165, as to proceedings in an action.—*Nant-y-Glo, etc., Ironworks Co.* v. *Grave*, 1878, *Bacon*, V.-C.; 38 L. T. (N. S.) 345; 26 W. R. 504.

5.—*Dividends on shares sold, afterwards declared—Right of Purchaser to.*

Upon the sale of shares in a company, under conditions of sale by which the purchase is to be completed on a future fixed day, and which contained no mention of dividends, dividends on the shares (in respect of a period anterior to the date of the Contract) declared between such date and the date fixed for completion, pass to the purchaser, whose right to the shares, with all accruing benefits and liabilities, became vested in him the moment the Contract of purchase was effected at the sale.—*Black* v. *Homersham*, 1878, *Kelly*, C. B., and *Cleasby*, B.; L. R. 4 Ex. Div. 24; 39 L. T. (N. S.) 671; 48 L. J., Exch., 79; 27 W. R. 171.

6.—*Paid-up shares in consideration of Newspaper Advertisements — Winding-up — Contract not registered—Companies Act*, 1867, *s.* 25.

A company agreed with W., the proprietor of a newspaper, that he might insert in his newspaper certain advertisements for the company,

provided he was willing to accept payment in fully paid-up shares. Advertisements were accordingly inserted, and shares, purporting to be fully paid-up, were issued to W., but the contract was not registered as required by section 25 of the Companies Act, 1867. A bill was sent in by W. for the advertisements, and the words "paid in script" were written at the foot of the bill and signed by W.'s agent.

Held (reversing the decision of *Hall*, V.-C.), that, the allottee having originally agreed to accept shares in payment of his account, the company never came under any liability to pay for the advertisements in cash; and therefore that the allottee must be placed on the list of contributories for unpaid shares. *Fothergill's Case* (L. R. 8 Ch. App. 270) followed; *Spargo's Case* (L. R. 8 Ch. App. 407; 28 L. T. (N. S.) 153) distinguished. In the latter case it was held that a *bonâ fide* debt in money payable by the company to the shareholders, at the time of the issue of the shares, would amount to "payment in cash" within section 25 of the Companies Act, 1867.—*Re Government, etc., Insurance Co., White's Case*, 1879, Ct. of App. (*James, Brett*, and *Cotton*, L. JJ.), L. R. 12 Ch. Div. 511; 41 L. T. (N. S.) 333; 48 L. J., Ch., 236; 27 W. R. 304.

7.—*Damages, Right to by a Newspaper Proprietor who is promised Paid-up Shares in return for Advertisements.*

In another case, also, advertisements were inserted on the terms of the newspaper proprietor, M., receiving certificates of fully paid-up shares to the amount of his charges.

The company was wound-up, and M. was settled on the list of contributories, and made liable for the full amount of the nominal value of

the shares, on the ground that nothing had been paid on them, and there had been no contract duly registered under the Companies Acts for the issue of the shares without liability. M. had no notice or knowledge that the shares were not issued under a registered contract. He made a claim to prove in the winding-up by way of damages for the par value of the shares in his name. It was contended that the company was not bound to register the contract before issuing the shares, and that contributory negligence was imputable to the applicant for not seeing that it was registered.

Hall, V.-C., was of opinion that the argument could not avail the company in the teeth of their express contract to give fully paid-up shares, *i.e.*, effectually paid-up shares. The agreement had been broken. For the breach there was a right of action against the company, and therefore a right of proof in the winding-up. In his opinion the measure of damages would be the value of the really paid-up shares at the date when the allotments were made.—*Re Government, etc., Insurance Co., Mudford's Case*, 1880, *Hall*, V.-C.; W. N., 1880, p. 90; 49 L. J., Ch., 452.

8.—*Equitable Mortgage—Share Certificates*—Cestui que Trust—*Trustee.*

(i.)—Where shares are held in trust, it is to be observed that as far as the trustee, the *cestui que trust*, and the company are concerned, the trustee is treated by the Companies Acts as being for all purposes the owner of the shares. This, however, is not the case as between the trustee, the *cestui que trust*, and third parties.

(ii.)—A certificate of shares is merely a solemn affirmation under the seal of the company that a certain amount of stock stands in the name of

the individual mentioned in the certificate. It is the duty of a person, who receives the certificates as an equitable mortgagee of shares, to inquire what is the real position of a person pretending to mortgage them, for if such person has only the legal title by having the certificates in his possession, but is, in truth, merely the trustee for another, the equitable mortgagee will be unable to enforce his claim in opposition to the original *cestui que trust*.

On this point decision was given in the House of Lords in the case of *Reg.* v. *Shropshire Union Railway Co.*, 1875; L. R. 7 H. L. Cas. 496, reversing S. C., L. R. 8 Q. B. 420.

(iii.)—Per *Cairns*, L. C.:—Whether a transfer of shares in a company can or cannot be made without the production of the certificates of the shares, is a matter entirely within the discretion of the directors.

9.—*Shares "in his own Right"—Claim to act as a Director.*

The words "in his own right" do not mean that a person must hold the shares beneficially.

In the case of *Pender* v. *Lushington* (L. R. 6 Ch. D. 70) *Jessel*, M. R., observed that, the register of shareholders was final for the purpose of voting, and that, as the Court was precluded by the Companies Act from regarding any trust attaching to the shares, all that the words "in his own right" meant was, that a person must hold the shares in his own right, and not in such a capacity as executor or administrator, or as the husband of a *feme coverte*, who might be a shareholder.

See, also, the later case of *Pulbrook* v. *Richmond Mining Co.*; L. R. 9 Ch. D. 610; 48 L. J., Ch., 65; 27 W. R. 377.

10.—*Allotment of Shares—Letter of Allotment posted, but not received—Post Office, Agent of Parties contracting by Letter.*

Where an offer or application for shares has been made to a person, who is expressly or by implication authorized to accept such offer by post, then, as soon as

a letter containing an acceptance is posted, correctly addressed to the applicant, the contract is complete, even though such letter never reaches the applicant.

The defendant applied for shares in the plaintiff's company. The company allotted the shares to the defendant, and duly addressed to him and posted a letter containing the notice of allotment, but the letter never was received by him:—

Held (affirming the decision of *Lopes*, J.), that the defendant was a shareholder. *British and American Telegraph Co.* v. *Colson* (L. R. 6 Ex. 108) overruled.

Household Fire Insurance Co. v. *Grant*, 1879, Ct. of App. (*Baggallay* and *Thesiger*, L. JJ.,—*Bramwell*, L. J., dissenting); L. R. 4 Ex. Div. 216; 48 L. J., C. P., 577; 41 L. T. (N. S.) 298. (See, also, the leading case of *Dunlop* v. *Higgins*; L. R. 1 H. L. Cas. 381.)

11.—*Buying up of shares.*

(i.)—It is open to doubt whether a company can purchase its own shares, even if the memorandum of association in direct terms authorizes it. By buying up its shares a company would be reducing its capital and the security of its creditors. It would be a reduction of a kind quite different from that for which specific provisions of a special kind are made by the Statute of 1867.

(ii.)—Nor can such a power be acquired after incorporation by special resolution.

In 1876, the *International Financial Society* determined, by resolution of two meetings, to apply its funds to buy up its own shares at prices by tender. A member,

Hope, objected and threatened legal proceedings. The directors thereupon determined (under a clause in the articles) to expel him, as one disturbing the peace of the society, and to pay him the market price of his shares.

Held, by *Bacon*, V.-C., that the scheme was *ultra vires* and void by reason of section 12 of the Companies Act, 1862, and that no clause in the articles could bar a member's right to apply to the Courts of law. Affirmed on appeal.—*Hope* v. *International Financial Soc.*, 1876, L. R. 4 Ch. Div. 327; 35 L. T. (N. S.) 623; 46 L. J., Ch., 200; 25 W. R. 203.

12.—*Purchase of Shares—Fraud of Directors—Rescission of Contract, not available after Company has stopped payment.*

T. appeared on the register as a holder of shares in a joint stock banking company, which stopped payment. After the stoppage, and before the resolution to wind-up had been passed, T. raised an action for reduction of his contract to take shares, on the ground that he had been induced to purchase them by the fraudulent misrepresentation of the directors.

Held (affirming the decision of the Court below), that the contract could not be rescinded after the company had stopped payment, as the rights of innocent third parties had intervened; and that T.'s action for reduction of his contract was too late to exempt him from liability. —*Tennent* v. *City of Glasgow Bank*, 1879, H. of Lords; L. R. 4 App. Cas. 615; 40 L. T. (N. S.) 694; 27 W. R. 649.

SHARE BONUSES.

As to Paid-up Shares given as a Bonus on Debentures—Liability as Contributory.

The articles of association of a limited company provided that the directors should offer for subscription certain Debenture bonds, and that with each bond they should allot, by way of Bonus to the lenders, fully Paid-up Shares of equal value to the amount of such bond. F., who was already a member of the company, subscribed for some of the bonds, and Bonus-shares of equal nominal value were allotted to him, and registered in his name, as paid-up shares. The company was afterwards ordered to be wound up:—

Held, that the articles of association did not constitute a contract in writing within section 25 of the Companies Act, 1867; that the requirements of that section had not been complied with, and that F. was liable as a contributory in respect of his Bonus shares.—*Re Malaga Lead Co., Firnstone's Case*, 1875, *Jessel*, M. R.; L. R. 20 Eq. 524; 23 W. R. 867.

SOLICITOR.

Solicitor's approval—Purchase—Offer, subject to, not a Binding Contract.

(i.)—A condition that a purchaser's solicitor should approve a purchase imports something more than the ordinary right, which a purchaser would have without any such condition to examine into the title. The meaning of the condition is that, if there is a reasonable

objection taken by the purchaser's solicitor, he should be able to rescind the bargain, and obviate the possibility of protracted litigation.

(ii.)—In the case of *Hudson* v. *Buck* (L. R. 7 Ch. D. 683) before *Fry*, J., 1877, the objections taken by the solicitor of the intending purchaser, to whom abstract had been delivered, were *held* reasonable, and specific performance was refused.

(iii.)—In the later case of *Hussey* v. *Horne-Payne*, a vendor offered, by letter, to sell a freehold property for a certain sum, and the purchaser replied, by letter, "I accept your terms, and agree to pay you the said sum, subject to the title being approved by our solicitors."

In an action by the purchaser for specific performance of the contract, alleged to be contained in the two letters, the vendor demurred:—

Held by the House of Lords (affirming the judgment of the Court of Appeal, which had reversed the decision of *Malins*, V.-C.), that there was no binding contract, as the purchaser had, in the words, "subject to the title being approved by our solicitors," imported an additional term, which had not been accepted by the vendor.

(iv.)—When a contract is contained in the several letters of a correspondence, it is not sufficient that the earlier letters should amount to a memorandum of a completed contract within the Statute of Frauds, if terms contained therein are varied by subsequent letters and conversations between the parties. Per Lord *Selborne*:—

"The Statute of Frauds is a weapon of defence, not offence, and does not make any signed instrument a valid contract by reason of the signature, if it is not such according to the good faith and real intention

of the parties." *Semble*, per *Cairns*, L. C., that the addition of the provision "the title to be approved by our solicitors" to a contract for the sale of land only means that the title will not be accepted without investigation, and does not affect a contract otherwise complete."

Hussey v. *Horne-Payne*, 1879, H. of Lords; L. R. 4 App. Cas. 311; 41 L. T. (N. S.) 1; 48 L. J., Ch., 846; 27 W. R. 585.

STATUTES.

Companies Acts, 1877, 1879, 1880.

The Acts relating to joint stock companies, which were hitherto known as "The Companies Acts, 1862, 1867," will, in accordance with the Statute of 1880, be designated, in future, "The Companies Acts, 1862 to 1880," in which title are included the Acts of 1877 and 1879. Respecting these Statutes it may be observed that:—

1.—The Act of 1877 (40 & 41 Vict. c. 26) defines—

(i.)—Paid-up share capital, and enlarges the powers given in the Statute of 1867 with respect to the Reduction of capital. It provides for the Cancelling of any lost capital, or any capital not represented by available assets, or for Paying off any Capital in excess of the wants of the company.

(ii.)—Certain powers are given for the cancelling of unissued shares.

(iii.)—The Statute makes provision with respect to Certificates and Documents to be received in evidence.

2.—The Act of 1879 (42 & 43 Vict. c. 76) relates principally to Joint Stock Banks, and makes provision—

(i.)—For the re-registration of Unlimited companies as Limited companies.

(ii.)—With respect to certain changes in the constitution of joint stock banks.

(iii.)—For the more efficient Audit of banks.

(iv.)—For the privileges of the new Act being available, notwithstanding the original constitution of the company.

3.—The Act of 1880 (43 Vict. c. 19) provides—

(i.)—For the payment of Undivided profits to shareholders, as a return and in reduction of the Paid-up share capital, subject to certain conditions.

(ii.)—That the Registrar may, subject to certain formalities, strike the Name of any company off the Register, which he shall have ascertained to be not carrying on business, or not come into operation, and notice to that effect is to be published in the *Gazette*, whereupon the company shall be Dissolved,—subject, however, to the rights of creditors being saved.

SUBSCRIBERS TO THE MEMORANDUM.

(*See* MEMORANDUM OF ASSOCIATION.)

Power to Call a Meeting—Winding-up—No Directors—Section 52 of Act of 1862.

A company had no formally constituted directors. Its articles expressly excluded "Table A.," and contained provisions for calling meetings by "directors" only, not by members of the company. A petition for compulsory winding-up was presented by four contributories, on the ground that, as there were no directors and no meetings could be called, the company had come to a dead-lock.

Held, by *Jessel*, M. R., upon the facts, that the subscribers to the memorandum of association had constituted themselves "directors" and could, therefore, call a meeting under the articles; but that, at all events, a meeting could be called under section 52 of the Companies Act, 1862. With reference to which section he said:—"It appears to me that

where, under the existing regulations of a company, you cannot call a meeting in any event, the 52nd section of the Act comes into force."

Re Brick and Stone Co., 1878, *Jessel*, M. R.; W. N., 1878, p. 140.

TENANCY.

Attornment Clause in Mortgage Deed.

(*See* MORTGAGE.)

(i.)—In the case of *Re Bowes, Ex parte Jackson*, 1880, (42 L. T. (N. S.) 409), *Bacon*, C. J., *held*, that in the absence of intention to commit a fraud upon the bankruptcy laws, the Amount for which the mortgagor attorned Tenant to the mortgagees was immaterial, and that, therefore, the mortgagee was entitled to the proceeds realized, under a distress, up to the amount lent.

In that instance, the letting value of the premises was admitted to be only £150 a year, but the debtor attorned to the creditor, as tenant, at the rent of £8,000 a year, payable yearly in advance. There were goods and chattels on the premises of considerable value, about £7,000. The deed was not registered under the Bills of Sale Act.

(ii.)—In this decision, *Bacon*, C. J., reversed one given by the Registrar, and said that he considered that he was following the Court of Appeal in the case of *Re Stockton Iron Furnace Co.* (L. R. 10 Ch. Div. 335; 40 L. T. (N. S.) 19.)

(iii.)—A little later, the case of *Re Bowes, Ex parte Jackson*, came before *Baggallay*, *Cotton*, and *Thesiger*, L. JJ., in the Court of Appeal (W. N., 1880, p. 126), when the foregoing decision of *Bacon*, C. J., was reversed, on the ground that the case of *Re Stockton Iron Furnace Co.* above did not apply, but that the matter fell within *Re Thompson, Ex parte Williams* (L. R. 7 Ch. Div. 138; 37 L. T. (N. S.) 764.)

The Court *held* that if, from the terms of a mortgage deed, which contains an Attornment clause, or from the amount of Rent fixed, it can be collected that it is not a real rent, that the tenancy is a mere sham, and that the clause is a mere device to give to the mortgagee (in the event of the bankruptcy of the mortgagor) a security over chattels, which would otherwise have been distributed among the creditors of the mortgagor—then the clause is void as a fraud on the bankruptcy laws.

(iv.)—It is noticeable that in the case of *Re Stockton Iron Furnace Co.*, the Court of Appeal had *held* that (under the circumstances, and considering the speculative nature of the property mortgaged,) the rent for which the mortgagor attorned was *not* a sham or fancy rent, and so not fraudulent, thus reversing the decision of *Bacon* (sitting as Vice-Chancellor) who had relied on the decision of the Court of Appeal in *Re Thompson, Ex parte Williams.*

TITLE.

1.—*Twenty years' deed—Vendors and Purchasers.*

(i.)—It is provided by the Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78), s. 2, that in the completion of any contract of Sale of Land made after 31st Dec., 1874, and subject to any stipulation to the contrary in the contract, "recitals, statements, and descriptions of facts, matters, and parties contained in deeds, instruments, Acts of parliament, or statutory declarations, twenty years old at the date of the contract, shall, unless and except so far as they shall be proved to be inaccurate, be taken to be sufficient evidence of the truth of such facts, matters, and descriptions."

(ii.)—Relying on this section, it has been held that a recital in a purchase deed more than twenty years old, that the vendor, under that deed, is seised in fee simple in possession of the lands to be thereby conveyed, is *primâ facie* evidence of that fact, and no prior abstract of title can be demanded, except so far as the recital shall be proved to be inaccurate, and in such cases a forty years' title is not required.

Malins, V.-C., observed:—

"I beg to express my opinion that it is a statement of fact that he was not only in possession, but he was in possession in fee simple of the pieces of land which were conveyed. Therefore, that relieves the [vendors] from the necessity of showing a forty years' title, because they have a deed twenty years old, which recites that the then vendor was seised in fee simple. This, in my opinion, was a perfectly good commencement of title. The vendors having, therefore, shown that the testator acquired the fee simple of the property, and everything that he acquired being now in the trustees, a good title is thus shown, and the event has happened which would entitle the vendors to have the purchase money paid into Court, and all questions betweem them thus settled."

Bolton v. *London School Board*, 1878, *Malins*, V.-C.; L. R. 7 Ch. D. 766; 38 L. T. (N. S.) 277; 47 L. J., Ch., 461; 26 W. R. 549.

2.—*Requisitions on Title—Inquiry as to Incumbrances not disclosed in Abstract.*

A purchaser made the following requisition:—

"Is there to the knowledge of the vendors or their solicitors any settlement, deed, fact, omission, or any incumbrance affecting the property not disclosed by the abstract?"

Held (reversing the decision of *Hall*, V.-C.), to be an improper requisition, and that neither the vendors nor

their solicitors were bound to answer any part of it. *Re Solomon and Davey* (see L. R. 10 Ch. Div. 366), overruled.—*Re Ford and Hill*, 1879, Ct. of App. (*James, Baggallay*, and *Bramwell*, L. JJ.); L. R. 10 Ch. Div. 365; 48 L. J., Ch., 327; 40 L. T. (N. S.) 41; 27 W. R. 371.

TRANSFER OF BUSINESS.

1.—*As to Notices by Dissentient Shareholders—Voluntary Liquidators.*

(i.)—Where a company, in course of Voluntary Liquidation, passes a special resolution, pursuant to section 161 of the Companies Act, 1862, empowering its liquidators to carry out a proposed Transfer or Sale of its business, the notice in writing of a dissentient member that he dissents, given in accordance with the provisions of that section, should also contain the requisition either to abstain from carrying the resolution into effect or to purchase his interest.

(ii.)—The liquidators in a voluntary winding-up are entitled to apply to the Court under section 138 of the Companies Act, 1862, to determine any question fairly arising in the winding-up, and any such application may be either by motion or summons.

Re Union Bank of Kingston-upon-Hull, 1880, *Jessel*, M. R.; L. R. 13 Ch. D. 808; 42 L. T. (N. S.) 390; 28 W. R. 808.

2.—*Agreement—Validity as against Creditors.*

(i.)—An agrement entered into, under section 161 of the Companies Act, 1862, by a company about to be wound-up voluntarily, for the sale and transfer of its

business or property to another company, is binding upon the creditors of the transferring company.

(ii.)—Where the transaction is *bonâ fide*, it is no objection to the agreement that it contains a stipulation that the purchasing company shall take a portion only of the Assets and Liabilities of the transferring company, leaving the rest of the debts to be paid by the liquidator of the transferring company, or that it contains a stipulation that the Shares of the purchasing company, which are to be given as a consideration for the transfer, shall be distributed directly among the shareholders of the transferring company, and not given to the liquidator as part of the assets in the voluntary winding-up.

(iii.)—The remedy of a Creditor of a company in Voluntary liquidation, who cannot get payment of his debt, is to obtain a winding-up order before the expiration of a year after the passing of the special resolution.

(iv.)—When a liquidator in a voluntary winding-up desires to appeal from a decision of a Judge, he ought first to obtain leave from the Judge, otherwise, in the event of his appeal failing, he will, as a general rule, have his costs disallowed.

Re City and County, etc., Co., 1879, Ct. of App.; L. R. 13 Ch. Div. 475; 42 L. T. (N. S.) 303; 49 L. J., Ch., 195. (*Fry*, J., affirmed.)

TRUSTEES.

1.—*Where the Purchase of Shares is made in the name of a Trustee, the Real Owner cannot be placed on the Register.*

(*See* SHARES.)

When shares are taken in the name of a trustee, the trustee is the only person who can be put on the list of contributories, because there is no contract to take the

shares between the company and the party for whom they are really taken. It has been attempted more than once to get the real owner on the register, but the attempt has always failed.

The directors of the *Humber Ironworks, etc., Company* sold certain shares on the Stock Exchange in the usual way to W., who gave the name of his foreman as transferee. The Transferee was properly described in the transfer in every respect but one—that is, he was described as a "gentleman" instead of as a soap-boiler's foreman. The board, having power to disapprove of him as transferee, did not do so, but registered him without objection, and, as it appeared, without inquiry. Nine years afterwards the official liquidator of the company, being informed of the circumstances, applied to the court to rectify the register, by substituting the name of W. for that of the foreman, mainly on the ground that the board had been imposed upon by the misdescription given by W. *Jessel*, M. R., however, refused the application, with costs, remarking that the "description of 'gentleman' is, of all the descriptions, the most indefinite, and the description which most calls for inquiry."

Re Humber Iron Works, etc., Co., Williams' Case, 1876, *Jessel*, M. R.; 45 L. J., Ch., 48.

2.—*Majority of Trustees.*

The act of a majority of trustees cannot bind a dissenting minority nor the trust estate. In order to bind the trust estate the act must be the act of all the trustees.—*Luke* v. *South Kensington Hotel Co.*, 1879, Ct. of App. (*Jessel*, M. R., *James* and *Bramwell*, L. JJ.); L. R. 11 Ch. Div. 121; 40 L. T. (N. S.) 638; 48 L. J., Ch., 361; 27 W. R. 514. (*Fry*, J., reversed.)

VENDORS.

(*See* PROMOTERS, SHARES.)

1.—*Secret Purchase.*

If A. purchases an estate in the name of B., and invites some one else to join him in a purchase from B. without disclosure of the fact that A. is really the vendor, the latter sale cannot stand.—*Erlanger* v. *New Sombrero Phosphate Co.*, 1878, H. of Lords; L. R. 3 App. Cas. 1218; 39 L. T. (N. S.) 269; 48 L. J., Ch., 73; 27 W. R. 65.

2.—*Non-Disclosure of Vendor's Name—Effect of—Proprietors.*

With respect to the above, *Malins*, V.-C., observed, in a recent case, that one of the points on which it was contended that the agreement respecting the taking over of certain premises was not good, was "wholly unsustainable and most unreasonable."

"It was said that because the name of the vendor was not disclosed by the agent, therefore the contract was invalid under the Statute of Frauds. . . . . In 99 out of every 100 cases, property was sold by auctioneers and agents without the name of the vendor being mentioned. If the law were that the name must be disclosed, it would have the effect of invalidating hundreds of contracts.

"Now, in matters of business, it is well established that practice makes the law, and should not the universal practice of auctioneers make that practice law? And if the practice of so large a body of men is not to disclose the name of the vendor, why should the concealment of the name vitiate the contracts, which must have been entered into upon that practice? . . .

"In one of the cases cited it was held that the words, 'instructed by the Proprietor' were good, and in another that 'instructed by the Vendor' were bad; but I cannot see how there can be any distinction between the two; and in the case of *Rossiter* v. *Miller* [See AGREEMENT] it was decided by the House of Lords that the description of 'the proprietors' for whom the agent acted was sufficient, and Lord *Cairns*, in his judgment, referred indiscriminately to the terms 'proprietor' and 'vendor' as synonymous."

The Vice-Chancellor was, therefore, of opinion that it was not necessary for the agent to disclose the name of the vendor until he was called upon to do so.—*Donnison* v. *People's Café Co.*, 1880, *Malins*, V.-C. (Not yet reported.)

See, however, the case of *Potter* v. *Duffield* (L. R. 18 Eq. 4; 43 L. J., Ch., 472), which is a decision opposed to the views above.

VOTING.

1.—*Rent-Charge—Claim to Vote—40s. a year.*

A. had created a certain number of Rent charges of the value each of £2 10*s.* out of the Reversion of a Lease for 1,000 years. One of these rent charges was granted to the appellant, with respect to which he claimed to be placed on the register of voters. Objection was taken before the Revising Barrister, and permitted by him, that the claim could not be allowed, because the interest was not free Land or Tenement within the Statute 8 Hen. VI. c. 7.

On appeal, *Coleridge*, C. J., said "that the decision . . . . was wrong and must be reversed. [The words of the Act were] '*Free land or tenement* (*frank tenement* in the original) *to the value of* 40*s. by the year at least above all charges.*'"

The question was, had the party Free land or tenement to the required value? A. held the land in fee, subject to certain leases, he was, therefore, a freeholder, and it was admitted that the land was amply sufficient

to bear the rent charges in question. They were also conveyed by good assurance, and the grantee (the appellant) was in possession of the profits. As, therefore, he was in enjoyment of the rent charge, and as it was of the value required by the Statute, he was entitled to be registered as a voter.

Lindley, J., concurred. He said:—"The question resolves itself into two,—(i.) What is the interest which each of these persons has?—(ii.) What is the value of that interest? Each has a freehold interest in the land, a rent-charge charged upon a reversion in fee, expectant on the determination of certain outstanding terms. That is a freehold interest. Then comes the question of value. It is found that the land is of a uple value to bear all the charges upon it, and that the claimants are in the actual receipt of the rent. It has a market value; and for its enforcement there are remedies against the land as distinguished from remedies against the person of the grantor. The grantee may, by pursuing the proper course, procure a sale of an adequate portion of the reversion to pay the rent. It is no sufficient answer, therefore, to say that there is no available power of distress. I think the decision must be reversed."

Dawson v. *Robins*, 1876, C. P. Div.; L. R. 2 C. P. D. 38; 35 L. T. (N. S.) 599; 46 L. J., C. P., 62; 25 W. R. 212.

2.—*Voter with no Beneficial Interest in the Shares.*

The chairman of a company had rejected a number of votes of shareholders duly registered, because he had been informed that they had no *beneficial interest* in the shares on account of which they were registered. This attempt to establish an inquisition into the *status* of persons, who are registered shareholdors, was set aside by *Jessel*, M. R., on the ground of the illegality of such an objection.—*Re Direct Cable Co.*, 1877, *Jessel*, M. R. (Not reported.)

3.—*Voting by show of hands—Poll.*

(*See* PROXY, RESOLUTION.)

(i.)—According to the common law of this country, at all meetings votes are taken by a show of hands.

In companies that plan would not always be satisfactory, and, therefore, a provision is usually made for taking a poll, and for estimating the votes according to the number of shares held by the voter, either absolutely or according to a graduated scale.

(ii.)—At a meeting of a company, at which five members were present, an extraordinary resolution to wind-up the company was passed. K. was then proposed as liquidator, and an amendment was moved that M. should be appointed. Three of the five members present voted (by a show of hands) in favour of M.; the other two voted for K. No poll was demanded.

It happened that the two who voted in favour of K. held more shares than the three who voted for M. *Bacon*, V.-C., decided that, although no poll had been demanded, the voting power of the two must be recognized distinct from the show of hands; therefore he confirmed the appointment of the liquidator, K., who was supported by the two members.

The Court of Appeal, however, differed from this view and *held* (reversing the decision of *Bacon*, V.-C.), that, a poll not having been demanded, the voting was to be by show of hands, without counting shares, and that M. therefore, was duly elected.—*Re Horbury, etc., Wagon Co.*, 1879, Ct. of App. (*Jessel*, M. R., *James*, *Bramwell*, and *Brett*, L. JJ.); L. R. 11 Ch. Div. 109; 40 L. T. (N. S.) 353; 48 L. J., Ch., 341; 27 W. R. 433.

WINDING-UP.

(*See* DEBENTURES, Art. 6; also, PROMOTERS' REMUNERATION.)

1.—*Rent—Distress for Rent, by Landlord.*

Where a company had entered into possession of Leasehold property under an arrangement with the Tenant, but without any arrangement with the Landlord, and the company was subsequently wound-up, it was *held* that the legal rights of a landlord, who cannot prove in the winding-up of a company, in consequence of his not being a Creditor of the company, are not interfered with by section 163 of the Companies Act, 1862; and he may, therefore, distrain upon the goods of the company, after the commencement of the winding-up, for Rent accrued before the commencement of the winding-up. *Re Lundy Granite Co.* (L. R. 6 Ch. App. 462; 24 L. T. (N. S.) 922), followed.—*Re Regent United Stores, Ex parte Burke*, 1878, Ct. of App. (*Jessel*, M. R., *Cotton* and *Thesiger*, L. JJ.); L. R. 8 Ch. Div. 616; 38 L. T. (N. S.) 493; 47 L. J., Ch., 677. (*Malins*, V.-C., reversed.)

2.—*Winding-up, Voluntary or otherwise—Set-off—Calls.*

(i.)—A contributory in a limited company cannot set off, against a call made in the winding-up, a debt due to him from the company.—*Grissell's Case* (L. R. 1 Ch. App. 528), *Black & Co.'s Case* (L. R. 8 Ch. App. 254),

disapproving of *Brighton Arcade Co.* v. *Dowling* (L. R. 3 C. P. 175), a case of voluntary liquidation.

(ii.)—A decision in the same sense was given, in 1878, by *Jessel*, M. R., who *held* that in the winding-up of a limited company, whether Compulsory, or under the Supervision of the Court, or Voluntary, there is no right of set-off by a contributory, against calls made by the liquidator, in respect of a debt due by the company to the contributory.—*Re Whitehouse and Co.*, 1878, *Jessel*, M. R.; L. R. 9 Ch. D. 595; 39 L. T. (N. S.) 415. In this case, also, the *Brighton Arcade* case was disapproved and not followed.

(iii.)—On the other hand, in the case of *Groom* v. *Rathbone*, December, 1879, (41 L. T. (N. S.) 591) it was *held* by *Kelly*, C. B., and *Stephen*, J., that the defendant in an action for calls, brought by the liquidator of a company, which is being Voluntarily wound-up under the Companies Act, 1862, is entitled to have leave to defend unconditionally under Order xiv., r. 1, of the Rules of Court of 1875, if he has a set-off, exceeding the amount of the claim, due to him from the company.

3.—*Voluntary Winding-up as against Compulsory.*[*]

After a resolution has been passed for winding-up a company voluntarily, a *shareholder* cannot, as a general

[* *Winding-up subject to Supervision of Court.*

(i.)—In the case of winding-up subject to Supervision of the Court, the liquidators are appointed by the company, but are subject to the control of the Court.

(ii.)—Winding-up under supervision takes place where a company, in course of

rule, obtain a compulsory order for winding-up, or an order for continuing the voluntary winding-up under supervision. The only exceptions to the rule are where the resolution has been passed fraudulently, or where creditors appear to support the petition.—*Re Gold Co.*, 1879, Ct. of App. (*James*, *Baggallay*, and *Bramwell*, L. JJ.); L. R. 11 Ch. Div. 701; 40 L. T. (N. S.) 5; 48 L. J., Ch., 650; 27 W. R. 757. (*Malins*, V.-C., reversed.)

In connection with this decision, see *supra*, art. 2, (iii.)

4.—*Voluntary Winding-up followed by Dissolution—No Compulsory Order obtainable afterwards.*

Where a company has been Voluntarily wound-up under section 142 of the Companies Act, 1862, and has been dissolved under section 143 of the Act, the Court has no jurisdiction to make a Compulsory winding-up order, unless the dissolution can be impeached on the ground of fraud.—*Re London, etc., Insurance Co.*, 1879, Ct. of App.; L. R. 11 Ch. Div. 140; 40 L. T. (N. S.) 666. (*Jessel*, M. R., affirmed.)

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being wound-up Voluntarily, has proceedings instituted against it for the purpose of enforcing a compulsory winding up.

(iii.)—The effect of the order is to continue the Voluntary liquidators as Agents for the purpose of conducting the winding-up, and to avoid the expense of constant reference to the Court, and of constant payment of money into Court. At the same time, if difficulties occur, any Creditor or Contributory may appeal to the Court against an order of the liquidators, and on hearing such appeal, the Court may modify or annul the order of the liquidators, and, in extreme cases, has power to put an end to the Voluntary liquidation and take the whole proceedings into its own hands.]

5.—*Appeal in the Name of the Company—Costs.*

Where an order has been made for winding-up a company, and an appeal from that order is presented in the name of the company, without any one being joined, who is personally responsible for the costs of the appeal, the Court will entertain an application for security for costs.

Held (affirming the decision of *Malins*, V.-C.), that although a liquidator had been appointed the company was not precluded from appealing.—*Re Diamond Fuel Co.*, 1879, Ct. of App.; L. R. 13 Ch. Div. 400; 41 L. T. (N. S.) 572; 28 W. R. 309.

6.—*Liquidator—Removal—By whom cannot be petitioned for.*

An application to remove a liquidator by a shareholder who, at the date of such application, has not paid his Call, will be dismissed with costs, even though the validity of the call was disputed by the shareholder and in the meantime he has offered to pay the amount of the call into court, to abide the decision as to the validity of such call.—*Re Norwich Provident Insurance Soc., Ex parte Hesketh*, 1879, *Bacon*, V.-C.; 41 L. T. (N. S.) 673; W. N., 1879, p. 216; 28 W. R. 272.

7.—*Petition by Creditor—Disputed Debt.*

(i.)—When a debt is *bonâ fide* disputed by a company, a creditor cannot obtain a Compulsory order to wind-up. It is well settled by the decisions that his claim must be

established, either by an action, or in the course of the proceedings on the petition.

In one of the latest cases, *Jessel*, M. R., observed that:—

"To entitle a person to petition, he must not only satisfy the Court that the debt was due, but also that the company ought clearly to have paid it. In some cases, no doubt, where there was a disputed debt, the Court might require the company to give some security before disposing of the petition, but this petition did not come within that class of cases."

Re South Kensington Stores, 1880, *Jessel*, M. R. (Not yet reported.)

(ii.)—So, also, *Malins*, V.-C., lately dismissed a petition on the ground that, where a debt is wholly disputed, the Court will not entertain a petition from the creditor to wind-up, until his claim has been made good by an action.—*Re Alcazar Co.*, 1880, *Malins*, V.-C. (Not yet reported.)

8.—*Paid-up shares—When holder able to prevent Winding-up Petition—Alleged fraud of Promoters or Directors.*

(i.)—A petitioner, who is not liable to contribute anything to the assets of the company on his shares, because they are Paid-up, must both allege in his petition and show by evidence that, after full payment of debts and liabilities, there will remain Assets of the company of such an amount that, in the event of a *Winding-up*, he would have a tangible share of Surplus to receive and of sufficient value to authorize him in presenting a petition.

(ii.)—On a Winding-up petition, as well as in an action, a vague allegation of Fraud is not sufficient, but the facts which constitute the fraud must be stated, although it is not necessary to state the evidence of the facts alleged.

(iii.)—Where there is only a vague general allegation of Fraud, evidence of the acts of fraud is not admissible.

(iv.)—*Quære*, whether a winding-up petition by a fully Paid-up shareholder can be maintained, where the petitioner alleges that the company has no available assets, except moneys to be recovered by rescinding Fraudulent transactions properly alleged in the petition. —*Re Rica Gold Washing Co.*, 1879, Ct. of App.; L. R. 11 Ch. Div. 36; 40 L. T. (N. S.) 531. (*Hall*, V.-C., affirmed.)

9.—*Bankruptcy of Shareholder.*

As to the liability of a person, who becomes bankrupt and is the holder of shares in a company in course of winding-up,—see *Re West of England, etc., Bank, Ex parte Budden and Roberts*, 1879, *Fry*, J.; L. R. 12 Ch. D. 288; 41 L. T. (N. S.) 179.

PART IV.

SUGGESTIONS FOR THE ESTABLISHMENT OF

CO-OPERATIVE

FARMING AND LAND SOCIETIES

In Ireland and other parts of the Kingdom.

CONTENTS.

POSTCRIPT.

The report of the "Royal Commission on the working of the Irish Land Laws," which has been lately published, contains a series of recommendations, signed by a majority of its members, that may be briefly summarised thus :—

(i.)—The Commission considers that the principles known as the "three F.'s" (see p. 135, herein) should be adopted as the basis of Legislation.

(ii.)—They say that, as a class, the Irish landlords have treated their tenants with forbearance; but they speak of this forbearance as the result of "common honesty," which forbade the landlords to appropriate the results of their tenants' labour in improving the soil.

(iii.)—They coincide completely with the opinion (which we have quoted at p. 136) of Lord Justice James, that the Irish Tenants consider that they have a possessory right in their holdings, as tenants, come down to them from time immemorial, and the Commission considers that a legal recognition should be given to this.

(iv.)—They think, therefore, that a "New Tenure" should be established with a continuous occupancy.

(v.)—What is understood in England and elsewhere as "Freedom of Contract" they consider is not an incident of Irish Tenure.

(vi.)—With respect to "Fair Rent" the Commission deprecates the idea that it means what is understood, out of Ireland, as fair (because it is a commercial) Rent, on the ground that such a Rent is liable to be perverted into a "Rack Rent;" whereas the Commission recognizes, for a fact, that some of the Surplus profits in Irish Tenancies belong, as of right, to the tenant, and not the whole to the Landlord.

(vii.)—They are of opinion that what is a "Fair Rent" should either be settled by arbitration or by trial at law.

(viii.)—They propose that "Free Sale" be conceded as a right of the tenant, provided the purchaser is not a man open to reasonable objections, and that he should be required to reside on and to buy the entirety of the holding.

(ix.)—And lastly that the Tenants should not be left free to contract themselves out of the "New Tenure," if such be created by the Legislature.

ON TRANSFER OF LAND, LAND DEBENTURES, AND CO-OPERATIVE FARMING AND LAND SOCIETIES.

SECTION I.

Of Further Facilities in the Transfer of Land.

ART. 1.—Although public attention has been lately awakened, by the operations of Land Societies, to the advantage of making land more easily marketable, and although owners are sensible of the importance of those obstacles being removed which impede the transfer of, or the raising of money on, real property, very little has been done towards the passing of legislative measures, which might make Investments in Land as negotiable as those in the funds or other like security.

Yet Royal Commissions and Committees in both Houses of Parliament have made various reports, which recommend speedy amendment of the law. Thus a Royal Commission has declared :—

"That investments in land, or landed securities, are much desired by the middle and working classes : but the uncertainty and complexity of Titles, and the length and expense of conveyances, together with the cost of Stamps, place this species of investment generally beyond the reach of those parties. Mortgages on land are liable to the same sort of difficulties, and also often prove insecure investments.

"That the greatest benefit would be conferred, both upon the Owners of land and upon the smaller capitalists desirous of purchasing land in small

portions, or of lending money in small amounts upon landed securities, by the simplification of Titles and the shortening of Conveyances."

And a House of Lords Committee has said:—

"The Committee are convinced that the marketable value of real property is seriously diminished by the tedious and expensive process attending its Transfer. Nor is it only in the transfer of real property that this burden is felt. It is a work of time to raise money on Landed Security, and the law expenses incident to the transaction are a considerable addition to the interest on the sum borrowed. The Transfer of the debt or mortgage is also attended with serious expenses to the Mortgagor; the process of discharging the land from one loan and subjecting it to another being both heavy charges upon the proprietor. The Committee are anxious to impress on the House the necessity for a thorough revision of the whole system of Conveyancing, and the disuse of the present prolix, expensive, and vexatious system."

Section II.

The issue of Land Debentures for Settlement and general purposes.

Art. 2.—Concurrently with the introduction of the preceding improvements in land transfer operations, another step is advocated, viz., the adoption of some comprehensive system of Debentures for settlement and general purposes charged upon landed property in England. The principle is, in its nature, analogous to that of "The Mortgage Debenture Acts, 1865, 1870," passed for *Land Companies* having at least £100,000 of capital, the outlines of which we have given at page 47 of Part III., and has already been adopted for Ireland by the Irish Record of Title and Land Debentures Acts, 1865 (28 & 29 Vict. cc. 88, 101).

The advantages of the plan were well explained by the late Mr. Vincent Scully, Q.C., M.P., whose labours in the cause of

land reform are so well known. When introducing the Irish Bill into Parliament on this subject, respecting which we were consulted, he pointed out that one of the chief objections, usually felt to the investment of money in the purchase of land, is that capital so invested becomes permanently locked up, and its available usefulness thereby much diminished. That this objection would be obviated, and the value of all land be greatly increased to its owner, if he could use it at any time as a sort of circulating medium, by possessing a limited power to charge it with negotiable Land Debentures. He might, thereby, from time to time, without expense or delay, raise sums of money to pay his debts, to give portions to his children, to improve or stock his farms, and to meet his current engagements. The principle of Land Debentures could be advantageously applied for the purpose of effecting a voluntary conversion of all charges that now affect landed property. By converting property in the land into Land Debentures of equivalent value, it would practically become as transferable as personal property.

"These Debentures, or the money value which they represent, might be put into settlement, and there would no longer exist any necessity for having intricate Settlements of land. The land would be represented by these transferable Debentures, and in lieu of complicated systems for registering all acts, deeds, and incumbrances of various sorts, there would thenceforth be substituted the most simple forms of charge and transfer. Property in land would also thus become conveniently distributed, without leading to any minute subdivision, or *morcellement* of the land. The proposed Land Debenture would possess more advantages than now belong either to the best mercantile bill of exchange, or to the most secure mortgage. It would combine the negotiability of the one with the stability of the other. It would arouse the capital which lies dormant in the land, and infuse an active vitality into inert matter. These Debentures would be eagerly sought after by bankers and capitalists, as secure investments for their unemployed funds. The only expense would be some trifling office charges, and some small stamp duties, which, from their frequency, would produce a large income to the State. This species of revenue would resemble the post-office charges. It would be another description of public taxation, cheerfully paid for value received."

He also explained :—

"That if a person has an estate worth £1,000 a year, he may go to the Judges

of the Land Tribunal proposed to be instituted, and ask them to issue to him £10,000 of Debentures, say of £100 each or any other fixed sum, all being of equal amount, having equal priority, and bearing an equal rate of interest, which of course will be the market interest of the day; but as the security would be of the very first order, the Interest would be extremely low, seldom exceeding three, or perhaps even two per cent. One advantage of this system would be, that the landowner could pay off the debt at his convenience, and in driblets. Whenever he has £100 he can make provision for paying off one of the £100 Debentures; and thus gradually lessen the charge upon his property."

3.—In continental countries much benefit has attended the operations of the system. Mr. Pollard Urquhart, M.P., in his work on the "Land Credit Companies of Prussia," has shewn that a system of Land Debentures has been long established in Silesia, and other parts of the Kingdom of Prussia, and that the Prussian Land Debentures are made payable to bearer, and may pass from hand to hand like bank notes, or drafts on a banker.

In the evidence given before the Industrial Savings' Committee it was also pointed out that—

"In England, dealings in land are a luxury, which a rich man may indulge in, but a poor man cannot indulge in.

"In Belgium there is a class we should call stockbrokers, but they are mainly connected with dealings in land, Mortgages, and transactions in Land; and any person wishing to invest a large or small sum going to them, has no greater difficulty in having the transaction arranged, safely and properly, than we have in buying stock, and going to a broker for that purpose. It is just as simple and as easy.

"In Hamburgh and in Frankfort, all persons such as our Bankers and Brokers, if they have any money that they wish to make available, instead of laying it out, as our bankers would, in the funds, or in Exchequer Bills, or other securities, would invest it in land, which we, according to the present state of the law, do not consider an available security. The difference is, in fact, quite reversed. A banker in Frankfort takes this Investment in Land as not only the safest and the best, but because it is the most readily turned into money, with less deductions or less influence from any circumstances. They prefer those securities to Bonds or to Bills, or to any other securities that are at all available to them as men dealing in money.

"The Government also have a great advantage from the constant dealings with land. It brings in a Stamp duty, and a much larger sum is raised in that manner, by way of Revenue, than is raised in this country."

With respect to the beneficial effects of Land Debentures, similar opinions were thus expressed by an economist of great authority in his evidence before the same Committee :—

"In Germany, one of the safest and most usual investments for small sums is in a kind of land debentures. The Mortgages there were divided into shares, and the documents which conferred the right to those shares were very generally in use as Investments by all classes, and were found very convenient, and increased very much the facilities of mortgaging land for its value. They also increased the value of land."

Section III.

Of Farming and Land Societies in Ireland and other parts of the Kingdom.

Art. 4.—In connection with Parts I. and II., we think it opportune to bring prominently forward the subject of "*Co-operative Farming and Land Societies,*" which has received a practical impulse, both in Ireland and in England, during the present year. It opens up a system by which the Government can do good service to the small Tenants, viz., by facilitating their associating together in such societies to be established under the Industrial and Provident Societies Act, 1876, in every suitable district. For this purpose all that would be needed would be loans from the State to the societies at some reasonable rate of interest. A slight margin over the Savings Banks rate paid by the nation would suffice.

As we have explained at some length in another work ("Industrial Investment and Emigration"), the establishment of Land investment societies in agricultural districts is much wanted. By them alone can that growing tendency to accumulate land in the hands of a few persons be counteracted, which is noticeable in respect to landed property all over the country.

The many thousand of small freeholds, which might be found a century and a half ago scattered over the length and breadth of the United Kingdom, have been gradually collected into large estates, the property of a few wealthy individuals. A change has consequently taken place in the character of the agricultural classes. The old Yeoman, with his few paternal acres of land, his high spirit and independence, has given place to tenants of various classes, sometimes farming on a greater scale than he did, but

holding, by leasehold tenure, the lands which were formerly divided into separate freeholds.

5.—The area, however, returned as under cultivation in Great Britain has increased, since 1870, according to the Board of Trade Report of 1880, by no less than 1,694,000 acres, or a greater area than the whole of Devonshire. Much of this reported increase of the area under cultivation is not, as Mr. Giffin points out, due to progressive advance in the reclamation of mountain, moor, and bog, inasmuch as a considerable share of it must be ascribed to greater accuracy in making out the returns; but when ample allowance is made on this ground, the fact remains that waste land is continually being brought under cultivation in the wilder parts of the country, a fact which cannot but be regarded as encouraging even in the midst of agricultural depression.

With regard to the size of holdings, the 1880 Board of Trade Report says:—

"On comparing the principal results with the figures of 1875, when the last return of this kind was obtained, the proportionate acreage of the large and small holdings seems to have undergone little change. Thus for Great Britain the area held in occupations of 50 acres and under is still 15 per cent. of the Total, that between 50 and 100 acres also 15 per cent., between 100 and 300 42 per cent., from 300 to 500 16 per cent., from 500 to 1,000 10 per cent., and in farms over 1,000 acres 2 per cent.

"In England alone a tendency to larger occupations may be noticed, the small farms of 50 acres and under being now 14 instead of 15 per cent. of the whole acreage, and the moderate-sized ones, between 50 and 300 acres, 54 per cent. against 56 per cent. in 1875; while farms over 300 acres amount to 32 per cent., or nearly a third of the cultivated area, as compared with 29 per cent. in 1875.

"In Scotland, however, the tendency is rather to an increase in occupations between 50 and 300 acres, which are now 59 per cent. against 58 per cent. in 1875; and the moderate-sized farms in Wales have also somewhat increased, so that, as before stated, the proportionate acreage for the whole of Great Britain is almost the same."

6.—The advantage of association on the part of Tenant farmers is illustrated by the views taken of the prospects of farming by

agricultural meetings. Mr. Findlay Dun, a member of the Royal Agricultural Commission, has stated that to render English farming less precarious and more profitable it must be more diversified. Less dependence than heretofore must be placed upon arable culture, less wheat must be generally grown, more live stock must be reared and fed, and more dairying and vegetable and fruit culture must be prosecuted. Arable land of poor quality, which could not be fittingly laid down to grass, must be planted with larch, ash, and suitable timber. The old lands of England could not be economically farmed on the rough and ready cheap system successful enough in the Western States and territories of the New World. They required increasing capital, skill, and resource to extract from them the varied and often perishable food, which it was now desirable that they should produce.

Mr. James Howard, M.P., speaking at a meeting (Oct., 1880) of the Farmers' Alliance, has also observed that:—

The proposals they had to consider were not akin to those which came to them from across St. George's Channel, but were such as to commend themselves to the judgment and approval of every unbiassed mind. "At the present time England presented to the world a very anomalous spectacle. We were the richest country in the world; we had a large accumulated capital which was seeking investment; we had a redundant population; we had a surplus of skilled agricultural labour of such quality as, perhaps, no other country possessed; and yet our fields were languishing for want of that very capital and labour of which we had such a superabundance. This was not only true of the present, but it was true, to a great extent of the past. Capital had long been repelled from agriculture by unwise Laws, restrictive Covenants, by Game reservations, by Insecurity of Tenure, by the absence of Legal right to Improvements, by impoverished Owners, by miserable Homesteads, and by undrained land." Those landowners who had pursued this course had, he believed, done so unwittingly; but they had, nevertheless, been sowing the wind; he hoped they would not reap the whirlwind.

The whole question is one which can only be settled by experience, and not by generalities. It is to be remembered that, against the virgin soil, summer heat rarely failing, and vast natural pastures of America, can be set off, here, greater abundance

of capital, greater cheapness of labour, and the valuable natural advantage of proximity to the consumer. The distance, apparently ever increasing, of the place of production from the local market, and the cost of transport, which is likely to grow rather than to diminish, have to be weighed against the treacherous British climate, which has, of late years, been displaying its worst features.

7.—With respect to Ireland there is even more urgent necessity for the adoption of the practical scheme under consideration for the amelioration of the condition of the labouring portion of the population of many parts of that country.

At few former periods in the history of Ireland has such extreme misery existed, as at present; for, although it is true that the general condition of the people has vastly improved during the last 200 years, yet it cannot be doubted that there is, now, a class absolutely much more numerous than at any former period, which suffers to the extreme limit of physical endurance; the class composed of those who, in the excessive supply of labour, which, owing to the redundancy of population, exists in the present day, are unfortunate enough to be placed at the bottom of the scale.

It has been suggested, that one immediate remedy is accessible, viz., by reclaiming the available tracts of Uncultivated land. These, in Ireland, still occupy an area of great extent, much of which could be reclaimed for the spade and the plough, with promise of great fertility.

8.—The nature of a "Co-operative Farming and Land Society" may be easily and concisely explained. Suitable tracts of country being purchased from the existing proprietors would, unless already in the desired state, be drained, fenced, and otherwise adapted for immediately profitable cultivation, at the expense of the society, and, so improved, would be divided into two parts:—one part to be farmed on the co-operative system by the society for the benefit of its members in their united capacity, the other to

be divided into small allotments. These allotments would be disposed of, by conveying the fee simple thereof to suitable persons, who could, at once, enter upon and cultivate the same, subject to a terminable rent-charge, a part of which would consist of the interest of the capital expended, while the remainder would be for the redemption of the price of the land. The principle to be adopted is in ordinary use in Building Societies, which are so numerous and successful.

The plan proposed is peculiarly fitted for the amelioration of the present condition of Ireland.* In that country from various causes land may be purchased at a comparatively low rate, and if adapted to the proposed purpose with proper skill and due economy, the redemption rent-charge need not greatly exceed the sum which, under the present system of Landlord and Tenant, is payable as rent alone. The plan offers a means of bringing about a complete change in the social condition of that portion of the kingdom, by restoring again the invaluable class of independent Yeomen, possessed of the strongest inducement to industry: viz., that the fruits of their exertion would be all their own; while a better state of cultivation might be developed by association.

9.—With reference to this subject, the following judicious remarks of the distinguished political economist, Mr. S. Laing, M.P., although made many years ago are yet true at the present time:—

"If we listen to the large farmer, the scientific agriculturist, or the political economist, good farming must perish with small farms; the very idea, that good farming can exist, unless on large farms cultivated with great capital, they hold to be absurd. Draining, manuring, economical arrangements, clearing the land, regular rotations, valuable stock and implements, all belong, exclusively, to large farms, worked by capital and by hired labour. This reads very well;

[* "Were the security of property and the empire of the law as well established in Ireland as in Britain, land would certainly sell higher in the former than in the latter. Most Irish estates are, comparatively, in a state of nature, and afford capacities for the profitable outlay of capital that are all but unknown in England."—*McCulloch's British Empire.*]

but if we raise our eyes from their books to their fields, and coolly compare what we see in the best districts farmed in large farms, with what we see in the best districts farmed in small farms, we see (there is no blinking the fact) better crops on the grounds in Flanders, East Friesland, Holstein, in short, on the whole line of arable land, of equal quality, of the continent from the Sound to Calais, than we see on the line of British coast opposite to this line, and in the same latitudes, from the Firth of Forth all round to Dover. Minute labour on small portions of arable ground gives, evidently, in equal soils and climate, a superior productiveness, where these small portions belong in property (as in Flanders, Holland, Friesland, and Ditmarsch in Holstein), to the farmer. It is not pretended by our agricultural writers, that our large farmers even in Berwickshire, Roxburghshire, or the Lothians, approach to the garden-like cultivation, attention to manures, drainage, and clean state of the land, or in productiveness from a small space of soil not originally rich, which distinguish the small farmers of Flanders, or their system.

"Large capital applied to farming is, of course, only applied to the very best of the soils of a country. It cannot touch the small unproductive spots which require more time and labour to fertilize them, than is consistent with a quick return of capital. But, although hired time and labour cannot be applied beneficially to such cultivation, the Owner's own time and labour may. He is working for no higher returns, at first, from his land than a bare living. But, in the course of generations, fertility and value are produced; a better living, and even very improved processes of husbandry, are attained. Furrow draining, stall-feeding all the summer, liquid manures, are universal in the husbandry of the small farms of Flanders, Lombardy, and Switzerland. Dairy husbandry even, and the manufacture of the largest cheeses, by the Co-operation of many small farmers: the mutual assurance of property against Fire and Hail-storms, by the Co-operation of small farmers; the most scientific and expensive of all agricultural operations in modern times: the manufacture of beetroot sugar; the supply of the European markets with flax and hemp by the husbandry of small farmers; the abundance of legumes, fruits, poultry, in the usual diet of the lowest classes abroad, and this variety and abundance essentially connected with the husbandry of small farmers—all these are features in the occupation of a country by Small Proprietor farmers, which must make the enquirer pause before he admits the dogma, that large farms, worked by hired labour and great capital, can alone bring out the greatest productiveness of the soil, and furnish the greatest supply of the necessaries and conveniences of life to the inhabitants of a country."

10.—The system of Co-operative Farming by Land Societies is entitled to the attentive consideration of all who care for the real welfare of Ireland. For there cannot be anticipated very much relief from such remedies as the extension of the Ulster custom or

the increase of small holdings through the operation of the *Bright* clauses of the existing Land Act and the larger measure introduced by Mr. Gladstone this session. The Ulster custom is open to the economical objection, that it deprives the incoming tenant of a portion of the capital needed for the efficient cultivation of his holding; and, as a matter of fact, it has been too readily credited with the prosperity due to the influx of industry and capital into the North from England and Scotland. If the custom itself were the sole cause of the prosperity of the districts affected by it, it ought, as a recent writer observes, "to operate equally beneficially in one county, viz., Donegal, where its use is of little value."

The *Ulster tenant right* is a *custom which sprang up in the North of Ireland at a period when payment of rent was very unpunctual. The landowners authorized their tenants to transfer their leases on the condition of receiving the arrears due out of the price of the transfer. But the position of the tenants has not thereby been improved. Instead of paying one rent they pay two, that due to the landlord and that represented by the interest of the sum paid for the transfer. Besides, the obligation of providing this sum, often considerable and always heavy in proportion as the rent is moderate, deprives the incoming tenant of the capital necessary for the proper working of his farm.

11.—The Registrar-General reports the total agricultural area of Ireland at 20,327,764 acres. Of this total he reports 4,661,938

[* In the reign of James I., Sir Arthur Chichester, the Lord Deputy of Ireland, induced the English Privy Council to adopt his proposition for *Ulster*, that "as long as the British landlords received their rents from the natives they should never remove them." The custom gradually took its present shape, of which the two main features are, Fixity of Tenure, and the tenant's rights to sell the Goodwill of his farm. Mr. Barry O'Brien in his admirable Parliamentary History, 1880, objects to the custom as not affording any security against an arbitrary increase of rent of the landlord. Mr. O'Brien's own plan is an extension of the Ulster custom, accompanied by a more general application of the principle of the "Bright" clauses, and that the rent under the Ulster custom, should be regulated by the price of Farms, or some other standard which can be known and reckoned upon.]

acres to be absolutely waste. Professor Baldwin reports that, exclusive of absolute waste, we have 4,000,000 acres rendered nearly valueless by the want of arterial drainage. Mr. J. G. MacCarthy, late M.P., submitted to Parliament in 1875 and 1878 measures designed to remedy such a state of things by which, in a country almost entirely dependent on its agriculture, two-fifths of its soil have been allowed to remain either absolutely waste or of most imperfect productive power.

It is curious that a race of such great ability as the Irish, who seem to understand so well the advantage of union and combination in political matters, should not have taken the short step further of combining to effect their object in respect to land by the existing accessible means of "Co-operation."

Ireland suffers from an uncertain climate, a teeming population, and antiquated methods of agriculture. With such disadvantages the single peasant proprietor, whom so many speakers desire to create, would, at best, be a man who has invested all he can scrape together in acquiring his land, but would be destitute of means and knowledge for improving and developing it. The remedy pointed out by nature itself, or rather, perhaps, by the unimpeded operation of economical causes, lies in the introduction of associated farming by co-operation, which has shown its power wherever instituted. The many advantages to be derived from it have lately been admirably set forth by Mr. Thomas Brassey, M.P., (Dec., 1880) in his speech at Hastings.

12.—The following are some of the resolutions passed at a recent meeting in Ireland, which may be selected as expressing opinions upon which concordance of view seems pretty general, even among the clergy and laity of calm deliberate judgment:—

"(1.)—Fixity or security of tenure as long as such fair rents, or others similarly determined to meet the varying circumstances of the times, shall be paid.

"(2.)—The free and unrestricted Right of Sale of the interest in his holding to the tenant under all circumstances.

"(3.)—The affording of every possible facility to Tenants to become Peasant proprietors by the purchase of their holdings.

"(4.)—The passing of a measure for the reclamation of Waste lands, for the purpose of locating on them peasant proprietors.

"(5.)—The improvement of the condition of the Labourers of the country, by making it obligatory on Landlords and Farmers to provide them with comfortable Cottages, to which in every case a reasonable portion of land should be attached.

"(6.)—We are also of opinion that, as a necessary preliminary to the practical settlement of the land question, the law of primogeniture and entail, and the other legal obstacles to the free transfer of land, should be entirely abolished, presenting as they do, an almost insuperable obstacle to the creation of a Peasant proprietary."

13.—In a recent speech of Mr. Joseph Cowen, M.P., at Sunderland, the salient points on which the Irish land agitation turns were forcibly stated. He said that "he was perfectly satisfied that all Englishmen were sincerely anxious not only to act justly and fairly, but generously by Ireland. The Irish were Celts and Catholics. Their system of land tenure was the tribal system common in Celtic countries. The English were Saxons and Protestants, and their land system was feudal. We resolved, however, without any reference to the conditions of the country, or the temper of the people, to force upon them the English system and the English modes of life.

"Until social and religious differences were acknowledged, until the historical antecedents and political aspirations of the race were recognised and dealt with, he despaired of seeing any permanent improvement either in the material condition of the people or in their relations with this country. Honest but ineffective attempts had been made to soften political asperities that grated in our intercourse. The Land Act of 1870 was an effort in this direction, but it had failed.

"There were two sets of Landlords in Ireland. There were many landlords that manifested towards their tenants far wider and more generous consideration than was shown to the same class in this country. Such were generally the large landowners. There was another class of an exactly opposite character.

These were chiefly men who had obtained properties that had been sold through the Encumbered Estates Court—speculators from England and Scotland—who had striven to exact the uttermost farthing from their impoverished tenants. The Tenant righters demanded three points—fixity of tenure at fair rents, with liberty of free sale.

"Restriction or free sale, whichever there was, should be mutual. The other project for converting Occupiers into Owners struck at no English prejudice, and it was not likely, if temperately and fairly stated, and rightly understood, to arouse such strong class antagonism. The Land League proposed that the Government should purchase some of the large estates, pay the owners a fair and reasonable price, and then sell them again to the Tenants; the latter paying by yearly instalments the price of the property they got, with interest for the money lent. It was, in fact, an application of a principle to the purchase and sale of land that had been put in operation in all English towns with so much success, through the instrumentality of building societies.

"The plan of the Land League was, to his mind, pre-eminently conservative, and if Englishmen could divest themselves of the passing heat and irritation they would soon see that it was not new. It had been carried out in other countries with complete success generations ago, and it had received the support of distinguished political economists and statesmen amongst ourselves. The great evil in Ireland at this moment was the small number of Owners of land and the proportionately large number of occupiers. The number of Owners of plots of land above ten acres was 25,000, while the tenants numbered 600,000, and those were nearly all tenants at will. There are in Ireland 156,000 mud cabins with only one apartment, and these are occupied by 228,000 families. Amongst the owners of land there were only about 7 per cent. Catholics. The League scheme would increase the owners, and thereby consolidate the institutions of the country.

"But provision should be taken to prevent undue subdivision. As it was, the holdings were miserably small. Out of the 600,000, 400,000 of them were under 30 acres, and 300,000 did not exceed 15 acres, while 130 of them did not exceed five. In one estate in Connaught there were no fewer than 3,900 tenants, not one of whom paid more than 5*l.* a year rent. In the county of Donegal there were 17,000, and in Galway 18,000, and in Mayo 19,000 holdings under an annual value of 4*l.* It was impossible for the occupiers to live upon the produce of such small plots.

"He had collected the gross value of the produce of several holdings larger than these, and he found that it did not amount on an average to more than 20*l.* a year. This was the gross value of the yield. Out of that rent was to be paid and seed bought. A family could not live upon such a miserable pittance. The whole subject, he knew, was surrounded with difficulties, and it would be unwise on the part of any one, even the best informed, to dogmatise. But the condition of Ireland was the most serious and urgent political question before the country. It ought to receive the dispassionate and careful and generous consideration of all men concerned in public affairs."

Mr. Bright, M.P., in his speech at Birmingham (Nov., 1880), also drew attention to some remarkable facts:—

"One-third of Ireland is possessed by 292 persons; one-half of Ireland is possessed by 744 persons—I suppose about as many as are in that gallery at the other end of the hall; and two-thirds of the whole island are in the possession of 1,942—perhaps a little more than half the persons that are present now in this building. On the other side, there are more than 500,000 Tenants.

"There is a great fact—500,000 Families, being at least from 2½ to 3 millions of persons, dependent upon the soil, competing with each other for the possession of a farm, having no variety of occupation as there is in England, having one way, and that only—the way out of the country—to escape from the difficulties in which they find themselves. These 500,000 Tenants are living, as they allege, for the most part, in a condition of continual insecurity. The Rent may be raised half-a-crown an acre this year, and another half-a-crown next. If the farm passes from the father to the son, or from the widow to the son, or from a farmer to his brother, or to another farmer of new family, there is an occasion where it is easy to propose some addition to the rent. The addition may not be so large as to shock the farmer and to drive him to cease from any attempt to enter upon the farm. By little and little Rent is added. The irritation of the Tenant becomes greater and greater. He sees the end to which he is being driven. He cannot live upon the farm, and he must give it up, and he must find himself homeless in his own country, and thus there has grown up in Ireland—and, of course, the most in the poorest districts—an irritation and a discontent which is the notorious and the universal material on which social or political Insurrections are generally based. Now, we must not forget that in Ireland men who hold the land hold the Homes and Lives of the people. . . .

"I do not believe that the Rent all over Ireland is an excessive rent if the land were farmed with a full security, by an instructed tenantry, and with an adequate capital; but one of the results of this system of insecurity is this—that Tenants will not cultivate their lands according to the best of their knowledge or according to the best of their capital, for to improve their cultivation is followed too often by the increase of rent. . . .

"Ireland contains about 20 millions of acres. I do not know the number of acres that may be called Waste lands; I have heard it put at two millions and more; but I will assume, for the sake of my illustration, that there are one million of acres in Ireland that are capable of cultivation, would repay the cultivation, and that it would be as wise to cultivate as the average portion of the Irish land that is now cultivated. Well, what would a million acres do? It would make not less than 40,000 farms of 25 acres each. It would be possible, probably, to bring over from those extreme western parts, where the climate is precarious and the land so stony and so poor—it might be possible to invite little farmers, peasants, occupiers from those districts, and to place

them upon waste lands thus divided and thus cultivated. What is a million—what is five millions—what is ten millions to this country to pursue to a successful issue a great question like this? . . ."

Mr. Parnell, M.P., is even more definite in his views. Since he has devoted himself to the Land question in Ireland, he has acquired unbounded influence over many of his countrymen. At a great Land League meeting, held (Oct., 1880) at Limerick, at which about 10,000 persons were present, he said:—

"I am one of those who believe that the labourers of Ireland can only be raised from their present degraded and suffering condition by making the Land free to all. However, I have no objection to the Legislature giving them an acre or two of ground on the farms on which they labour; at the same time, I think that goes a very short way to meet the question." He had long abandoned belief in the doctrine of Fixity of tenure at periodic Revaluation of tenants' holdings, because every English statesman of eminence had declared against it. There must, he said, as in France, in Prussia, and in Belgium, be established a system of Peasant Proprietary by the aid of the State, but the completeness of the settlement of the question must depend entirely upon their own exertions. "What we ask you to do this winter is to push down the rents, to lower the rents, to combine among yourselves, and to offer the landlord a just rent, and to bring the strong force of public opinion to bear upon any man who dares to take a farm. And in this way you have the power of settling the land question this winter in Ireland; and when you have done that, and not until then, the English Parliament will do it for you.

"I believe that within two years you will see a part of the work which was done by the famine undone. I believe you will see within that period the resumption by the State of the titles in the land which it has granted through the Landed Estates Court to land-jobbers. And do not let anybody for one moment say that these things are impossible, or are for such a remote future. They are very much nearer than many of us suppose, but the measure of the completeness of the settlement must entirely depend upon your own exertions."

With reference to the price to be paid by tenants, Mr. Biggar, M.P., has quoted a term of years for enfranchisement shorter by ten years than that put forward by other members of the Land League. He said (Oct., 1880) that—

"It was proposed that the Government should buy out the landlords at 18 or 20 years' purchase on the Government valuations, in loans bearing

3 per cent. interest. The landlord would then be sure of his interest. . . . . It was proposed to give the tenant the holding at 4½ per cent.—3 per cent. to repay to the Government, and 1½ per cent. to form a sinking fund, so that in a number of years the tenants would have paid the value of their holdings."

Mr. Penrose Fitzgerald, a landed proprietor in the Cork district, said he was strongly in favour of a Peasant Proprietary, where the landlord is willing to sell. The real cause of the grievance in the country had been the purchase of estates by speculators, who treated the land and the tenants as chattels.

The plan suggested by Mr. Litton, Q.C., M.P. for county Tyrone, as stated by himself, in November, 1880, to have been communicated to Mr. Gladstone is—

"To place in the hands of a Commission a sum of two millions to begin with, to be applied in purchasing estates as they come into the market at—say 22½ years' purchase, and then sell to the tenants at a like rate of purchase; but instead of requiring a cash payment, turn the whole of the purchase-money into an annuity for a certain number of years at a rate which would not exceed the rent, but would in time extinguish the principal and interest . . . . and so establish Peasant Proprietorship."

Mr. T. A. Dickson, M.P. for Dungannon, eulogised on the same occasion Mr. Bright's "great scheme for the creation of a Tenant Proprietary . . . . A Land Commission should be formed to make the Tenant-farmers actual owners of every acre of land put upon the market."

Mr. D. H. Macfarlane, M.P., says—"One quarter of Ireland is waste, and three quarters only half cultivated." He adds his opinion that the cause of this does not lie in the fact of the people not being Saxons, and asks—"Are the Belgian and the French peasants, who cultivate every square inch like a market garden, Saxons?"

Mr. Errington, Q.C., M.P., like Mr. Macfarlane, advocates the maintenance of the relations of landlord and tenant with a

protection of the tenant against eviction; and Mr. Macfarlane cites Bengal as a country where such a system works well.

14.—Mr. W. J. O'Neill Daunt, however, who was one of the most prominent of O'Connell's coadjutors during the Repeal Agitation, condemns strongly the Land League scheme of a Peasant Proprietary. He says:—

"The project of peasant proprietors, as proposed by the Land League, would, if practically carried out all over Ireland, increase the distress of our already impoverished country by sending off the whole Irish rental for 35 years to the London Treasury. . . . Daniel O'Connell, who certainly understood the needs of Ireland as well as any man, preached up fixity of tenure at fair rents. . . . Let us suppose that the English Treasury has advanced the 270,000,000*l.*, or whatever other sum may be necessary, to buy out the landlords, and to hand the fee-simple to the occupying tenants. There are, I believe, roughly speaking, about *half a million* of tenants in Ireland. But there are about *five millions and a half* of people in the country. Suppose the half million of tenants are established as peasant proprietors, what is to be done with the claims of the remaining five millions? Have not they a right to say to the peasant landocracy, 'You are only one-eleventh of the nation. Why should one-eleventh grasp all the land? Our right to the land is as good as yours; it is good as our right to the air and the water. Our leaders have told us so. We will not permit your monopoly. We insist in getting our share of your estates.'"

And yet the system of peasant tenants has its zealous supporters. Thus Mr. R. P. Blennerhassett, M.P., declared:—

"The growth of peasant proprietorship in Ireland was one of the objects he most ardently desired. . . . Good policy required that no effort should be left untried to secure, for as many as possible, the inestimable boon of owning the land they tilled. . . . The tenant at will could never root himself in the soil, or get so firmly established in prosperous times that he could bear the strain of adverse seasons when they came. He was without the strongest of all incentives to industry—the certainty that he was working for himself."

Even twenty years ago, as Mr. Justin McCarthy, M.P., states, "the Land Tenure Committee proclaimed that no settlement of the Irish Land question could be suggested by sensible men, which did not include a plan for the foundation of a Peasant proprietary."

So, also, Lord Belmore, in November, 1880, said: "As regards the question of peasant proprietors, I hold the view that the more owners of land you have the better." But he adds:—

"I am aware that the purchasing out of landlords wholesale by means of a 3 per cent. stock is at present out of the range of practical politics; and, if it were not so, 30 years' purchase, instead of Mr. Biggar's 18 or 20 years, would be the minimum that the present owners ought to receive. All compulsory sales, also, would be out of the question."

The benefit to be derived from Co-operation in farming, as a means of introducing a better system of culture and a change in the character of the produce sought from the land, is shown by the remarks of Mr. T. P. O'Connor, M.P. He observed:—

"The average value of the potato crop was £9,522,000. The value of the potato crop in 1876 had reached £12,464,000. In 1877 its value had fallen to £5,272,000; in 1878 it was £7,580,000; whilst in 1879 it was but £4,623,000; and, in other words, the Irish people lost half of that on which they were depending to keep body and soul together."

Mr. F. H. O'Donnell, M.P., says that—

"The situation of Ireland demands not only the utmost legitimate extension of a Peasant Proprietary system, but also the complete protection of existing tenantry from arbitrary disturbance and unjust rent; and the protection of tenants at the moment was of more importance than the creation of peasant proprietors."

15.—The principles involved in *"The Landlord and Tenant (Ireland) Act, 1870," popularly known as the Irish Land Act, has, subject to revisal of its many defects, numerous supporters.

Sir George Campbell, M.P., anticipating the course which Mr. Gladstone has found it necessary for the Government to follow, contended that the Bill should "continue in the lines of the Land Act of 1870—that is, to give greater security to the tenant without wholly getting rid of the landlords by any wholesale scheme, but by further extending and improving the 'Bright' clauses of that Act, to facilitate and encourage the gradual acquisition of Freehold tenures."

[* 33 & 34 Vict. c. 46.]

Lord Lifford says that—

"The 'Bright' clauses of the Act of 1870 I have always liked; but what are called the 'three F.'s'—viz., *Fixity of tenure*, *Free sale*, and *Fair rents* . . — contain within their lines the material of a not altogether unsatisfactory Land Act."

This is also the opinion of Mr. R. Bagwell, of Clonmel, who considers that "five people out of six, from Peer to Peasant, favour something of this kind."

In this view of fixity of tenure, the Earl of Cork coincides, and says that there exists a dread of many to occupy even that land which has probably been justly and fairly taken away from others.

In reference to the statement that improvement has been effected by the Land Act in the condition of the farmers in Ireland, Mr. John Dillon, M.P., replies :—

"I have lived in Ireland all my life, and since the Land Act was passed I never could find out what that improvement was. I never found out that the Act put a check on the evil of rack-renting, or stopped a single eviction. . . . The Land Act must be swept away, and the whole system must be swept away which it was passed to protect."

Mr. Malhullen Marum, M.P., concurs in the above opinion.

He contends that, "by the jurisprudence which regulates the codes of most civilised nations, eviction for the non-payment of rent, caused by the failure of crops, was not permitted, and that the Courts would not insist on the contract between the parties being carried out in its entirety. Ireland is over-rented in a great measure by reason of foreign competition."

Mr. Osborne Morgan, M.P., considers that :—

"Men of all opinions were rapidly beginning to feel that it was time that those artificial barriers to what might be called the Free circulation of Land . . should be levelled to the ground, and when that was done, land, like every other commodity, would gravitate by a natural process to those best fitted to hold and use it, and the question of large or small proprietorships might be safely left to take care of itself. . . . But it is hopeless to legislate for Irish land according to English ideas. They had in Ireland, except in one small portion in the North, no great manufacturing or mining interests, as in England; no large centres of industry, whose business, whose mission it was to draw away the strain of the population upon the land. The Irish peasant

lived, if he could be said to live at all, by the land and on the land. The land was the only plank which divided him from starvation, and a very narrow plank, unfortunately, it often was."

One of the special difficulties of the question is well pointed out by Mr. Mitchell Henry, M.P., who recently remarked that "the small cultivator must be taught agriculture before he can practise it; and to free him from the fear of his landlord, and there to leave him, with the State as his rent receiver, will mend matters very little. The Irish problem is a complicated one, not to be solved by any one panacea. If the State becomes the universal landlord, it must also fulfil what should be the universal duties of a landlord—viz., to take a direct and personal interest in the tenants."

This it could effect through Co-operative Farming and Land Societies, directly fostered and aided by the Government.

16.—Lord Justice W. M. James, in a masterly letter to the *Times* (Dec., 1880), lends his high authority to a recognition of the fact that by the unwritten law and custom of Ireland, or of a great part of it, there is a well understood equity which has been by all decently good landlords admitted—that is to say, that no tenant ought to be disturbed in his holding if he pays his rent, and that eviction or arbitrary enhancement of rent is a wicked confiscation of the tenant's equitable interest. "According to Irish notions, the tenancy is not a matter of Contract but of Tenure."

Mr. Richard O'Shaughnessy, M.P., declares unhesitatingly that, if any landlord refuses such a tenure at such a rent as will permit the farmer to live in suitable comfort, "he deserves to be expropriated. Let him depart in peace with the money value of his land fairly assessed"

Mr. Leonard Courtney, M.P., is, also, of opinion that the secret of the present discontent as far as it is real in Ireland on the part of the tenants is that "the landlords had the power,

and sometimes used it, of enhancing the rents so as to destroy what was the rightful property of the tenant. Could there be any question as to the obvious remedy? It was to give the tenant security against the possibility of such wrongdoing, assure to every tenant selling his piece of land the inviolability of his holding, and give him the right of selling it to any man against whom no reasonable objection could be raised."

On the other hand, a well-known writer on the subject, Mr. John La Touche, of Newbridge, Ireland, objects strongly to "the scheme known as the three F.s," principally for this, among other reasons:

"That, while it compels the Landlord to grant Fixity of tenure to the tenant at his present rent, which may be far below the fair letting value of his holding, it permits the tenant to dispose of the farm for the highest sum he can obtain. This restriction is imposed upon the Landlord, while freedom is given to the Tenant. The right to the difference between the present and a higher prospective Rent (exclusive of the value of Improvements, if any, secured to the tenant by the Land Act, 1870) belongs to the Landlord, and not to the Tenant; and to hand over the right to this property without payment from the former to the latter would be an act of confiscation."

This view is supported by many speakers of weight, who represent what may be the just rights of landlords as against their tenants,—rights that belong to them by the common law of the United Kingdom not less with Land than with property of any other kind. They claim compensation for the owners from the State, if such rights are infringed upon.

Mindful of the ancient exclamation:—

"Quam temere in nosmet legem sancimus iniquam"

they would have Parliament remember that retribution may follow hasty and, in consequence, possibly unjust legislation, if the principle of Compensation be neglected, in connection with Mr. Gladstone's new measure,—or, if by empirical remedies, the want of capital and enterprise which afflicts Ireland is aggravated, and if Investments are made more insecure and more unremunerative than before.

Art. 17.—*Defects of the Irish Land Act.*

The Bill introduced by Mr. Gladstone this session illustrates the extent to which he, in common with many thoughtful men, is disposed to go in order to meet the Irish requirements. But it is in a way that is not free from the old objection that a State is wrong which places itself in the position of a creditor over individual tenants. The principle we have suggested of National loans to Co-operative farming societies is open to no such objection. It would be to the interest of each member to see that his fellow members pay their quota with due regularity to the society, which, in its turn, would be responsible to the State.

The system would be analogous in its action to that in Russia, where the Rent is converted into a fixed charge or rate, collected by local authorities, with jurisdiction over limited areas and with power to impose an additional rate, in aid, if the rent charge for which the area is assessed be not forthcoming, or to force the sale of the defaulter's farm. This, as Lord Dufferin points out, is what is done by the Heads of the Russian Committee, or '*Mirs*,' even when the land is not cultivated in common, but is held by individual peasants.

"Supposing such a system were established in Ireland, it would work in this way :—A tenant in a particular townland would fail to pay a portion of the rent-charge. All his neighbours knowing that, in his default, they would have to make good the deficiency, would immediately require him either to pay or to sell his holding. Thus the public opinion of the whole country would be strongly in favour of the payment of rent."

And here it may be observed, that among the changes not sufficiently provided for by the Land Bill are some which for the purposes in view are desirable :—

(i.)—That the restrictions at the end of sections 44 and 45 of the 1870 statute be considerably modified.

(ii.)—That the rate of interest involved in the repayment of loans be made less than 3½ per cent., having regard to

the much lower rate of interest which depositors receive on their deposits in the Post Office Savings Bank, from which source abundant capital for State advances can be obtained.

(iii.)—The statute fixes the repayment-annuity (covering principal and interest) of each 100*l.* loan at the sum of 5*l.* a-year to be paid during 35 years. A reduction of the interest involved would permit of the present Term of Repayment being shortened considerably below 35 years, or, instead, a smaller repayment-annuity than the 5*l.* would be required for the 35 years.

(iv.)—Only one term, 35 years, is allowed in the Act, but it is desirable that a choice of terms, ranging from 5 to 35 years, should be substituted.

18.—But in dealing with the matter it cannot be over-looked that there are two distinct divisions of persons connected with the farming of land in Ireland, who have to be separately considered.

One, the Tenant farmers, who are of a class not deficient of some means, and generally possessing considerable ability and experience. They could at once form local Co-operative Societies probably without much aid from the State, and appoint committees of management from among their own body. A simple set of Rules would suffice to unite them together and to give them the advantages of the Statute of 1876, to which we have before referred.

They would, before long, reap the benefits to be derived from associated intelligence, associated knowledge and enterprise, and the command, through the society, of mechanical appliances and machinery too costly to be bought by individuals of small capital. So, also, purchases could be made by the society of seed, cattle, and other agricultural necessaries, for distribution amongst the members at a little beyond wholesale prices.

The other and more numerous class of persons, whose requirements are urgent, consists of the Peasant tenants, who are, in

most cases, absolutely without any resources whatever. They live in squalid dwellings, always in privation and frequently in the greatest distress. The formation of associations, established on the principle of mutual assistance, would be of the greatest value to them; and it is not in accordance with the experience of Irishmen under a different condition of things, as in America, to assume that, if they were properly aided at home through the intervention of a Co-operative Society, they would not be able to earn a reasonable subsistence out of even the small holdings they occupy. To them Government help in the form of loans to the societies should be freely given, and from among their local friendly advisers could be selected committees of management.

19.—The view taken by large tenant farmers, naturally a little one-sided, is that "it is a great mistake to think small holdings will prosper in Ireland." They admit, however, that an "increase in the number of peasant proprietors would be of service if they be of a certain class." This assertion is probably correct. The isolated peasant by himself, discouraged by adversity and without effective help, may easily lapse not merely into habits of improvidence but even into listless neglect of opportunities which are accessible to his hand.

To each of such men an association would afford mutual encouragement and an incentive to better exertion.

Undoubtedly, the single peasant proprietor in the present condition of things, even if he obtain fixity of tenure, or be assisted by the State to procure complete ownership, would, in many cases, without something else, remain in a condition of impoverishment all his life through.

What is desirable instead is a union of peasant tenants in process of gradually becoming owners, to whom opportunity for each acquiring information, as to the improvements applicable even to his little agricultural venture, would be of great benefit. Such,

through joint action with others having the same views and ambition as himself, would be offered by united proprietorship in a society, of which each member would be a controlling part. When the selected term of years has expired and the period of redemption is completed, individual and independent ownership would follow.

The land, by economy, through wholesale co-operative purchases and appliances, by draining and improved culture, would, without difficulty, before long be found to produce a much better income even on the smallest holdings.

20.—It is probable that in some instances the committee of the society would find that the most effective of their remedies would lie in Emigration. To meet such cases should be one of the purposes of these societies.

In our work before referred to, under the title of "*Industrial Investment and Emigration,*" the plan is explained upon which Emigration societies could be established. The principles therein stated may, without difficulty, be engrafted so as to make Emigration a branch of the objects of a Farming and Land Society.

ART. 21.—*Of Co-operative Societies in Great Britain.*

What is proposed to be done for Ireland by the State might, by the aid of Co-operative Societies, be made of equal service in England and Scotland. As Mr. Caird, the recognised high authority on Agricultural matters, says :—

"Circumstances have thus forced upon us changes which can no longer be postponed. These, by legislative measures which will tend to break up embarrassed estates, will gradually place the land in the possession of owners who can act upon it with freedom. There will then be a large increase of Landowners cultivating their own land, and especially will this be so if *the same facilities for purchasing it as have been offered in Ireland are, in justice to them, also offered to the farmers of England and Scotland.*

"We shall find landowners selling a portion of their property, in order to become themselves the cultivators of the rest with the capital thus acquired, and the smaller landowners, to whom they sell, vieing with them in the improvement of their new farms, neither being hampered with the restrictions on cultivation generally imposed between landlord and tenant.

"Room, too, will be found for Peasant proprietors, where the Agricultural Labourer may, in favourable localities, get a foothold on the land of his own country. I should have little fear of a prosperous result to well-applied industry on this principle, if due care is taken that no Government loans for such an object be granted, except where the climate is favourable and the land of good natural quality. On such holdings there is ample room for good business in eggs and poultry, early and late vegetables and fruits, and milk and butter, upon all of which the profit will be in proportion to the skill and labour employed in their production. The system would not only give free play to skilled labour, but would also elicit the action of the higher qualities with which man is endowed, and which are too apt to lie dormant when he works under a mechanical routine.

The General Secretary of the Co-operative Congress, Mr. E. Vansittart Neale, M.A., who is known as one of the most enthusiastic promoters of the movement, says with truth in a paper on the Land Question that the point, on which experience may be said to have spoken with a clear voice in regard to the cultivation of land, is that, in order to produce the best results attainable by any given amount of capital and skill, the cultivator should have a direct and permanent interest in the result of his work. But this direct and permanent interest is precisely what the co-operative ownership of land offers peculiar facilities for securing.

"Permanency of interest is obviously the natural accompaniment of collective ownership by bodies whose duration is not limited to the narrow bounds of individual life; and the securing to the immediate cultivator a direct interest in the proceeds of his work, is a result linked by natural ties to the ownership of land by bodies of men, who are themselves workers, and, therefore, can fully appreciate the incalculable benefit to other workers of assuring the full value of their work to those who do it. Add to this, that investment in land, being one of the safest modes in which capital can be laid out, is peculiarly suitable for the employment of capital belonging for the most part to persons who look to the security of the money invested rather than to the magnitude of the returns received from it."

Mr. Caird justly says that though the *Three per Cents are at par*, and the general rate of Interest for some years has been so low as to show a rapid accumulation of capital, no reduction of interest on Loans for landed property has been effected. The Mortgaged landowner is so shackled that he can make no stand against this, and the transaction between him and the Capitalist is so environed by questions of Title and collateral interests, requiring legal investigation, that they cannot directly approach each other. Over a considerable extent of England there is as much need of a Landed Estates Court as there was in Ireland in 1849. Many large properties would no doubt be broken up by it, but the Parliamentary title, which could then be given, would render future dealings with the land easy and inexpensive, and would after a time lead to an enhancement of its value. There would be abundance of land for sale if the restrictions that impede its Transfer were removed.

22.—Mr. Shaw-Lefevre, M.P., who speaks with consummate knowledge of the subject, said at Reading and at Accrington (Dec., 1880), the question had arisen with him, "as it had with everyone, who looked at our rural system, why it was that, as the country advanced in wealth and population, its* landed property should fall into fewer hands?"

"No dispassionate observer, he felt, could come to any other conclusion than that the gradual absorption of land into a few hands was due, not solely, as had been argued, to economic causes, but to laws which gave sanction and facility for the accumulation of land and prevented its dispersion, and which had made any dealing with land so costly and dilatory that no poor man dared touch it.

"In this country alone we retained the mediæval feudal traditions connected with land, and here alone we found the very opposite result to that on the continent. . . . .

[* In contrast with the United Kingdom, it may, also, be noticed that in France the number of Landowners is reckoned at 5 millions, and the number of Fundholders at 4½ millions.]

"He saw no reason why there should not be a far greater variety in the ownership of the land; why, side by side with larger properties small ones should not exist, and why, in our rural villages, the agricultural labourers should not often become Owners of their houses, gardens, and even a field or two.

"Everywhere we had seen a movement in Europe for interesting a larger number of people in the maintenance of property rights. Everywhere the result had been the same,—content had been advanced, property rights made more safe, and the prosperity of those countries improved. He would quote only the example of Flanders, a district of poor soil, and of small cultivators with a considerable number of large properties, but also, owing to the changes in the laws, with a large body of small holders."

This is the view of the late Mr. Kay in his work "Free Trade in Land," who describes the "Peasant properties in Flanders as forming a kind of rampart and safeguard for the rents of large estates, and the Peasant proprietor as one who may, without exaggeration, be called the lightning-conductor that diverts from society dangers, which might otherwise lead to catastrophe."

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